



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

SFUND RECORDS CTR
2120562

March 26, 2007

Via Email and U.S. Mail

Mr. Keith Takata
Director, Superfund Division
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA

Mr. Bruce Gelber
Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C., 20044-7611

RE: United States Environmental Protection Agency ("EPA")'s Statement of Position
Regarding Omega Chemical Superfund Site 2005-06 Oversight Costs Dispute

Dear Mssrs: Takata and Gelber:

Enclosed please find the above-referenced Statement of Position and exhibits. Please contact me if you have any questions about any of the documents.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steve Berninger", is written over a horizontal line.

Steve Berninger
Assistant Regional Counsel

Enclosures

cc: Leslie Schenck
Elizabeth Adams
Karl Fingerhood
Chris Lichens
Frederick Schauffler

UNITED STATES OF AMERICA,

Plaintiff,

v.

ABEX AEROSPACE DIVISION and
PNEUMOABEX CORPORATION; AIR
PRODUCTS AND CHEMICALS, INC.; ALCOA
INC.; ALLIED SIGNAL, INC. (now known as
HONEYWELL INTERNATIONAL, INC.);
ALPHA THERAPEUTIC CORPORATION;
APPLIED MICRO CIRCUITS
CORPORATION; APPROPRIATE
TECHNOLOGIES II, INC.; ARLON
ADHESIVES & FILM; ARMOR ALL
PRODUCTS CORPORATION; AVERY
DENNISON CORPORATION; BASF
CORPORATION; BAXTER HEALTHCARE
CORPORATION; BOEING NORTH
AMERICA, INC.; BONANZA ALUMINUM
CORP.; BORDEN, INC.; BOURNS, INC.;
BROADWAY STORES, INC.; CALIFORNIA
DEPT. OF TRANSPORTATION; CALSONIC
CLIMATE CONTROL, INC. (now known as
CALSONIC NORTH AMERICA, INC.);
CANON BUSINESS MACHINES, INC.;
INTERNATIONAL PAPER COMPANY;
WASTE MANAGEMENT, INC.; UNITED
DOMINION INDUSTRIES; CITY OF LOS
ANGELES, DEPARTMENT OF AIRPORTS;
CITY OF SANTA MARIA; COUNTY OF LOS
ANGELES; CROSBY & OVERTON, INC.;
DATATRONICS ROMOLAND, INC.;
DEUTSCH ENGINEERED CONNECTING
DEVICES/DEUTSCH GAV; DISNEYLAND
CENTRAL PLANT; DOW CHEMICAL
COMPANY; FHL GROUP; FIRMENICH
INCORPORATED; FORENCO, INC.;
GAMBRO, INC.; GATX TERMINALS
CORPORATION; GENERAL DYNAMICS
CORPORATION; GEORGE INDUSTRIES;
GOLDEN WEST REFINING COMPANY;
GREAT WESTERN CHEMICAL COMPANY;
GSF ENERGY, L.L.C. (successor to GSF
ENERGY, INC.); GULFSTREAM
AEROSPACE CORPORATION; HEXEL
CORPORATION; HILTON HOTELS
CORPORATION; HITACHI HOME
ELECTRONICS (AMERICA), INC.; BP
AMERICA, INC.; HONEYWELL

Case No. 00-12471

Dispute Resolution Pursuant to Consent
Decree Paragraph 57

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY'S STATEMENT
OF POSITION REGARDING CERTAIN
OVERSIGHT COSTS

INTERNATIONAL INC.; HUBBEL INC.; HUCK
MANUFACTURING COMPANY (by its former
parent Federal Mogul Corporation); HUGHES
SPACE AND COMMUNICATIONS
COMPANY; HUNTINGTON PARK RUBBER
STAMP COMPANY; INTERNATIONAL
RECTIFIER CORPORATION; JAN-KENS
ENAMELING COMPANY; JOHNS MANVILLE
INTERNATIONAL, INC.; K.C. PHOTO
ENGRAVING CO.; KESTER SOLDER
DIVISION, LITTON SYSTEMS, INC.;
KIMBERLY CLARK WORLDWIDE, INC.;
KOLMAR LABORATORIES, INC.; LOS
ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY; LOMA
LINDA UNIVERSITY; BRITISH ALCAN
ALUMINUM, P.L.C.; MATTEL, INC.;
MAXWELL TECHNOLOGIES, INC.; THE MAY
DEPARTMENT STORES COMPANY;
McDONNELL DOUGLAS CORPORATION, a
wholly owned subsidiary of the BOEING
COMPANY; MEDEVA PHARMACEUTICALS
CA, INC. (f/k/a MD PHARMACEUTICAL INC.);
METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA; MICO INC.;
MINNESOTA MINING AND
MANUFACTURING COMPANY; QUALITY
CARRIERS INC. (f/k/a MONTGOMERY TANK
LINES, INC.); NI INDUSTRIES (a division of
TRIMAS, a wholly owned subsidiary of
MASCO TECH); NMB TECHNOLOGIES
CORP.; OHLINE CORP.; OJAI
MANUFACTURING TECHNOLOGY, INC.;
SIEMENS MEDICAL SYSTEMS, INC.;
PACIFIC BELL TELEPHONE COMPANY;
PACIFIC GAS & ELECTRIC CO.; PIONEER
VIDEO MANUFACTURING, INC.; PRINTED
CIRCUITS UNLIMITED; NELLCOR PURTIAN-
BENNETT; LONZA INC.; QUEST
DIAGNOSTICS CLINICAL LABORATORIES,
INC. (f/k/a BIO SCIENCE ENTERPRISES);
RATHON CORP. (f/k/a DIVERSEY CORP.);
RAYTHEON COMPANY; REGENTS OF THE
UNIVERSITY OF CALIFORNIA; REICHOLD
INC.; REMET CORPORATION; RESINART
CORP.; ROBINSON PREZIOSO INC.;
ROGERS CORPORATION; SAFETY-KLEEN
SYSTEMS, INC. (f/k/a SAFETY-KLEEN
CORP.); SCRIPTOTOKAI CORPORATION;
SHELL OIL COMPANY; THE SHERWIN-
WILLIAMS COMPANY; SIGMA CASTING

CORPORATION (now known as HOWMET ALUMINUM CASTING, INC.); SIGNET ARMORLITE, INC.; SOUTHERN CALIFORNIA EDISON CO.; SOUTHERN PACIFIC TRANSPORTATION CO. (now known as UNION PACIFIC RAILROAD COMPANY); HARSCO CORPORATION; BHP COATED STEEL CORP.; TELEDYNE INDUSTRIES INC.; TELEDYNE TECHNOLOGIES INCORPORATED; TENSION ENVELOPE CORP.; TEXACO INC.; TEXAS INSTRUMENTS TUCSON CORPORATION (f/k/a BURR-BROWN CORP.); TITAN CORPORATION; TODD PACIFIC SHIPYARDS; TREASURE CHEST; PACIFIC PRECISION METALS, INC.; UNION OIL COMPANY OF CALIFORNIA; UNITED PARCEL SERVICE, INC.; UNIVERSAL CITY STUDIOS, INC.; VAN WATERS & ROGERS INC.; VOPAK DISTRIBUTION AMERICAS CORPORATION (f/k/a UNIVAR CORPORATION); VERTEX MICROWAVE PRODUCTS, INC. (f/k/a GAMMA-F CORP.); WALT DISNEY PICTURES AND TELEVISION; WARNER-LAMBERT COMPANY; WEBER AIRCRAFT; WESTERN METAL DECORATING CO.; YORK INTERNATIONAL CORPORATION; YORT INC. (f/k/a TROY LIGHTING, INC.-TIFFANY DIVISION),

Defendant.

I. Introduction

The United States Environmental Protection Agency ("EPA") hereby submits this Statement of Position ("Statement") in response to the initiation by the Omega Chemical Site PRP Organized Group ("OPOG") of formal dispute resolution under the February 28, 2001 Partial Consent Decree ("Partial CD"), pursuant to which studies and work are being performed at the Omega Chemical Superfund Site. This Statement, and the supporting documentation enclosed herewith is filed pursuant to Section XIX of the Partial CD. (The Partial CD (without attachments and PRP signature pages) is enclosed as Exhibit 1.)

EPA agrees with OPOG that formal dispute resolution should proceed under Paragraph 57 of the Partial CD. Consistent with Paragraph 57, EPA has prepared an administrative record, which will contain all statements of position, as well as the documentation accompanying this Statement. The Partial CD provides that, based on the administrative record, the Director of the EPA's Region 9 Superfund Division will issue a final administrative decision resolving the dispute. Partial CD, ¶ 57.b.

II. Background

The Omega site work is being done as a combination of PRP-lead and fund-lead. OPOG is performing a non time-critical removal action for groundwater, and a soils remedial investigation/feasibility study in OU-1, under the Partial CD. EPA is doing most of the OU-2 work, with the exception of installation and sampling of some groundwater monitoring wells, which was done by another PRP group. Work related to OU-3 includes an indoor air investigation, and is another obligation of OPOG under an amendment to the Partial CD.

OPOG has disputed all charges billed under the Response Action Contract (RAC) by EPA's contractor, CH2M Hill ("Hill"), claiming that OPOG has inadequate cost documentation on which to evaluate: whether the charges are Oversight Costs as defined in the Partial CD; whether the charges are consistent with the National Contingency Plan (NCP); and whether accounting errors have been made by Hill.

Although the current dispute relates only to costs from fiscal year 2005-06, EPA has provided increasingly detailed information to OPOG in support of EPA's requests for reimbursement over the past few years. For the 2001-02 and 2002-03 oversight cost bills, EPA provided a financial cost summary and a brief narrative description of the work performed, in less detail than the narrative summary portion of the Monthly Status Reports (MSRs) prepared by Hill. OPOG disputed EPA's 2003-04 oversight bill, requesting additional documentation regarding RAC costs, including Hill's timesheets. In addition to EPA's cost summary, EPA provided the

MSR narrative summaries and EPA's Statement of Work for the Operable Unit One (OU-1) RAC work assignment, detailing further the support Hill provides to EPA for OU-1 activities. After receiving these documents, OPOG paid the 2003-04 bill.

OPOG disputed the 2004-05 bill in its entirety (including EPA's costs), for many of the same reasons as it now disputes the 2005-06 bill. OPOG complained that the MSR narrative summaries did not provide the appropriate level of documentation to support the contractor charges, and that the generality of the work description and the number of persons involved did not give OPOG enough information as to what was actually done, how much time was spent, and other details necessary to evaluate whether the charges were properly considered Oversight Costs under the Partial CD. OPOG again requested Hill's timesheets. OPOG also complained that EPA charges were not adequately supported. After EPA and OPOG met to discuss the bill and resolve the dispute, EPA provided complete MSRs for three months, and offered to provide MSRs for the remaining nine months if OPOG desired.¹ After reviewing the complete MSRs, OPOG asked EPA to provide the narrative summary and Report 1 from each MSR for the entire billing period. EPA complied with this request, and OPOG paid the 2004-05 bill.

The present cost dispute arose after EPA sent OPOG a letter on November 28, 2006, requesting payment of the 2005-06 oversight costs, along with EPA's itemized cost summary, which is the only documentation required by the Partial CD. With that letter, EPA also enclosed the narrative summary from each MSR for the billing period, in order to facilitate OPOG's payment of the 2005-06 costs. In that correspondence, and in communications with OPOG since then, EPA has maintained its position that it is not required under the Partial CD to provide any portion of the MSR. (The November 28, 2006 letter and attachments are enclosed as Exhibit 2.)

On January 8, 2007, in a letter to Bruce Gelber of the U.S. Department of Justice (DOJ) and Keith Takata of the EPA, OPOG notified EPA that it was disputing Hill's costs because it had not received sufficient documentation to support these costs. (Exhibit 3). OPOG requested supporting documentation for Hill's work, "in the form of time sheets or other documentation showing what work was actually done, who did the work, when the work was done, tasks performed, time spent and hourly rates." This letter also initiated the "informal negotiation period" under the Partial CD (Paragraph 55). During the informal negotiation period, in the interest of resolving the dispute with OPOG, EPA offered to again provide the Report 1 sections from the MSRs, relating to the 2005-06 costs, in a letter to OPOG's counsel, Leslie Schenck, on January 25, 2007. (A copy of this letter and attachments is enclosed herewith as Exhibit 4.) In that letter,

¹ The MSRs prepared by Hill consist of a narrative summary, an itemized "Report 1" ("Work Assignment - Task Level Specific Detail Report"), "Report 1A" ("Work Assignment Supplemental Detail Report"), "Report 2T" ("Current Month and Cumulative Status Report"), "Report 3T" ("Variance Based on Extended To-Date Report"), and Standard Form 1035 ("Public Voucher for Purchases and Services Other Than Personal").

EPA also provided a sample of a Hill timesheet to demonstrate the nature and type of information that can be expected to be included on such timesheets, since it was apparent that OPOG might believe that Hill's electronic timesheets contained detailed descriptions of employee tasks.

In its January 25, 2007 letter, EPA offered to extend until February 12, 2007 the informal negotiations period, which was due to expire under the Partial CD on January 28, 2007. The parties later extended the informal period until February 26. Subsequently, EPA granted OPOG's request to extend the period another week, until March 5, 2007. On March 12, OPOG submitted its Statement of Position. (Exhibit 5).

EPA has made several efforts to resolve the current dispute. Communications between the parties include various telephone calls between OPOG's and EPA's counsel, including a conference call on February 5, 2007 between OPOG's counsel, Leslie Schenck and Keith Millhouse and EPA's Steve Berninger, Thanne Cox, and Chris Lichens, as well as Karl Fingerhood with the DOJ. On February 6, OPOG asked EPA to provide the details of Hill's quality assurance/quality control process, and EPA's review of Hill's bills. EPA's email responding to OPOG's request on February 12, 2007 (and attachment thereto) is enclosed as Exhibit 6. In response to OPOG's request for them, and in the hope that it would resolve the current dispute, EPA mailed to OPOG the MSR Report 1s for the entire 2005-06 billing period, after OPOG agreed to maintain their confidentiality.²

As explained in further detail in this Statement, OPOG is required by the Partial CD to pay oversight costs thereunder. EPA has provided OPOG with even more documentation relating to the 2005-06 costs than what is required by the Partial CD. In addition to the cost summary EPA customarily encloses with its request for payment of oversight costs, EPA has provided OPOG with the narrative summary and Report 1 sections of the MSRs that Hill prepares. EPA has a process for determining whether Hill charges are adequate, and has followed that process. Moreover, EPA's process comports with government contractor requirements. EPA provided to OPOG all documents upon which EPA relies. OPOG has asked for "underlying timesheets . . . along with the hourly and cost information supporting these bills". OPOG Statement at p.7. This documentation is above and beyond that which EPA typically requires from its contractors. Significantly, the "information supporting" Hill's timesheets is not something that is compiled by Hill in its ordinary course of business, or in the case of the 2005-06 costs. The burden of providing timesheets outweighs any benefit of providing them. Accordingly,

² Because these documents have already been provided to OPOG, and due to their sensitivity, these Report 1s are not being enclosed with this Statement. They will be made available under separate cover to the Director of the EPA's Region 9 Superfund Division, the administrative decision maker in this matter.

OPOG's assertion that a swift resolution of the dispute can be achieved if EPA provides the timesheets and other supporting information is inaccurate.

EPA's position is strongly supported by case law, which makes it abundantly clear that additional cost documentation is not required under the NCP (or under the Partial CD, which defines Oversight Costs with reference to the NCP). Innumerable courts have held that EPA, to prove what it spent on an activity, does not have to prove the accuracy of the contractor's costs for which EPA was billed. Rather, EPA must show only that it tasked the contractor to perform response (or, in this case, oversight) actions, that EPA received a bill for those actions, and that EPA paid it. However, in addition to unanimous legal support on this issue, there are also numerous practical reasons why EPA should not be required to provide additional information. These legal and practical reasons are discussed at length below.

III. EPA is not required to provide Hill's timesheets or any underlying hourly or cost information supporting these bills.

- A. EPA has provided to OPOG cost documentation adequate and sufficient for OPOG to evaluate whether the 2005-06 oversight charges are Oversight Costs under the Partial CD, the NCP, and case law, and whether there are accounting errors that OPOG could challenge.**

OPOG argues that it cannot evaluate the reasonableness of the oversight charges "without more substantive documentation from Hill, as to the detailed activities each person engaged in, the dates they undertook such activities, the time each activity required, the number of employees asked to work on each activity and their hourly rate". OPOG Statement at p.10. Before even considering what is required by the Partial CD, NCP and case law, it is noteworthy that, with only one minor exception explained below, OPOG already has the information it requests.

The MSRs contain: the name of the employee who performed the work in question; the month in which the specific task was performed; a description of that task; the number of hours spent on the task by that individual; the hourly rates of the employee; and the dollar amount billed to the task. The only information not communicated by the MSRs is the number of hours an individual spent on the Omega matter *on any particular day within the month* in which the charge was billed.

- B. OPOG is not entitled to any additional information (e.g., timesheets) under the Partial Consent Decree between the parties.**

The Partial CD (Paragraph 44) requires EPA to provide a "Regionally Prepared Itemized Summary Report which includes direct and indirect costs incurred by EPA and its contractors,

and a DOJ prepared cost summary which reflects costs incurred by DOJ and its contractors, if any, on a periodic basis." Although this Summary Report is not further defined in the Partial CD, EPA's standard itemized cost summary, in and of itself, constitutes a Regionally Prepared Itemized Summary Report. (See Exhibit 2). Of course, as described above, EPA has provided far more than this cost summary.

The Partial CD does not require the provision of MSRs or timesheets, and OPOG has not argued that it does. In effect, by demanding timesheets (after EPA provided MSRs in an effort to resolve the dispute), as well as underlying hourly or cost information supporting the timesheets, OPOG is attempting to rewrite the terms of that agreement.

EPA strongly disagrees with OPOG's implication that oversight costs have not been itemized. EPA's cost summary itemizes oversight costs. The MSR narrative summary and Report 1s, provided to resolve this dispute, itemize costs in even more detail. Even a cursory review of them demonstrates this. For example, the May 2005 Report 1 contains line item entries for each of the following: direct labor (professional), direct labor (clerical), other direct costs, travel, computer, equipment, subpool, insurance premium, and indirect costs (including fringe, overhead, and general and administrative costs). EPA's cost summary and the MSR sections OPOG possesses is more than sufficient for OPOG to determine that oversight costs have been properly charged.³

C. OPOG is not entitled to any additional information -- i.e., timesheets or underlying hourly or cost information -- under the NCP or case law.

OPOG must reimburse the United States for "Oversight Costs" incurred by the United States in connection with the work done pursuant to the Partial CD "not inconsistent with the [NCP]." Partial CD, ¶ 44. Accordingly, the NCP is directly relevant to what is meant by Oversight Costs, and what type of documentation is required to substantiate them. The NCP requires that EPA:

"shall complete and maintain documentation to support all actions taken under the NCP and to form the basis for cost recovery. In general, documentation shall be *sufficient* to provide the source and circumstances of the release, the identity of responsible parties, the response action taken, *accurate* accounting of federal, state, or private party costs incurred for response actions, and impacts and potential impacts to the public health and welfare and the environment." 40 C.F.R. § 300.160(a)(1) (2006) (emphasis added).

³ It is not clear what OPOG means to imply by describing the MSR as "highly massaged". OPOG Statement at p.7. The narrative summary portion of the MSR provides just that - a summary of activities from the then-current and following month.

Courts interpreting the question of consistency of cost documentation with the NCP have consistently rejected the notion that any particular document or type of document must be provided in order for cost documentation to be adequate. Courts have merely required that the documentation be "adequate" or "sufficient" to support the cost claim. See, e.g., *United States v. W.R. Grace & Co.*, 280 F. Supp. 2d 1149, 1179-80 (D. Mont. 2003) (aff'd by *United States v. W.R. Grace & Co.*, 429 F.3d 1224 (9th Cir. 2005)) ("[The NCP] does not establish prescriptive standards for the content of cost documents"; it "requires only that 'in general' documentation be sufficient to provide an accurate accounting of costs incurred."); *United States v. Chrysler Corp.*, 168 F. Supp. 2d 754, 769 (N.D. Ohio 2001) (holding that NCP "does not contain any specific standards concerning the documentation of costs"). In *Chrysler*, the court held that contractor's invoices, which broke down expenses into eight general categories such as labor, travel and subsistence, were sufficiently specific standing alone to meet the requirements of the NCP, in spite of contractor's failure to provide "project daily summaries, project daily details, reimbursable travel and subsistence logs, contractor personnel reports, equipment usage logs, and subcontractor reports . . ." *Ibid*.

Several courts have examined the need to provide the very type of documentation OPOG seeks. OPOG's attempts to distinguish these cases from the current cost dispute are unjustified. Contrary to OPOG's assertion in its Statement, these cases are directly relevant to the current dispute. Courts have frequently found cost documentation to be adequate and sufficient, even where there is no indication in the case that timesheets were provided. See, e.g., *United States v. Findett Corp.*, 220 F.3d 842 (8th Cir. 2000) (upholding summary judgment for EPA on CERCLA response costs where "EPA submitted thoroughly detailed cost summaries, supporting data, and other competent evidence to support its claim for recovery of response costs"); *United States v. Chromalloy American Corp.*, 158 F.3d 345, 352 (5th Cir. 1998) (government agencies' documentation of costs was sufficient where it submitted "detailed cost summaries supporting its oversight expenses"); *United States v. Hardage*, 982 F.2d 1436 (10th Cir. 1992) (characterizing as "extensive documentation" affidavits of various EPA and DOJ employees charged with accumulating the cost data, which "were supported by summaries of cost data accumulated in connection with the Hardage site, and the source of that data"). In none of these cases was the presence of timesheets noted by the court.

The issue currently before the Director was also considered in a recent California district court case, *State v. Neville Chem. Corp.*, 213 F. Supp. 2d 1134, 1139 (C.D. Cal. 2002), in which the court specifically held that information identical to that sought by OPOG was not required to be provided. Neville argued that the timesheets prepared by employees of the California Department of Toxic Substances Control ("DTSC") failed to provide adequate detail of actual

services performed because project activity codes used to designate DTSC site-related functions were too general to allow one to determine what specific employee activity was being documented. The court stated:

"The thrust of Neville's argument is that DTSC's time sheets do not provide a *specific description of exactly what task an employee was engaged in at a particular time* on the Neville site. However, Neville has not cited any case where a specific description of exactly what task the employee performed at a particular time was held to be required by 40 C.F.R. § 300.160(a)(1)." *Emphasis added. Ibid.*

A recent unpublished United States District Court opinion (Eastern District of California) also addressed whether EPA provided adequate cost documentation to support EPA's contractor's response costs. *See U.S. v. Atlas Corp.*, No. CIV F 92-5373 OWW (E.D. Cal. Sept. 6, 2000). (A copy of this decision has been enclosed as Exhibit 7 herewith.) The court specifically addressed the alleged lack of information supporting the charges of Ecology & Environment ("E&E") and E&E's subcontractor. Despite the fact that the supporting documentation was limited to three invoices to prove payment (and no work-performed documents were provided by EPA for E&E's subcontractor's bill), the court awarded EPA its full outstanding costs. The court based its decision on a declaration from an EPA employee, who stated that E&E does not normally receive supporting documentation for its contractors' subcontractors' work, and on the fact that E&E certified the costs incurred by the subcontractor. *Id.* at 13. "To require the EPA to provide documentation it normally does not require for itself, and which is normally kept in the possession of its contractor, E&E, is overly burdensome, and not required by the Consent Decree." *Id.* at 13-14. The court also noted that E&E "certified the costs contained in their bill (including those of the subcontractors) were accurate and were incurred in connection with the [operable unit]." *Id.* at 14. This certification is very similar to Hill's certification of its invoices (see *infra* discussion, Section III.E).

Although OPOG implies that case law does not address contractor oversight costs (as opposed to cost recovery by agencies), it offers no rationale for distinguishing the two. Several of the cases noted herein would strongly suggest there is no such basis; they specifically address contractor costs, as well. *See, e.g., United States v. W.R. Grace & Co.*, 280 F. Supp. 2d 1149, 1167 (D. Mont. 2003) (noting that EPA's direct costs at issue in the case include the cost of contractors performing work at the site); *United States v. Findett Corp.*, 220 F.3d 849 (8th Cir. 2000) (noting progress reports from contractors was among the cost documentation provided); *United States v. Chrysler Corp.*, 168 F. Supp. 2d 754, 769 (N.D. Ohio 2001) (involving contractor's invoices that broke down expenses into eight general categories);

The oversight costs at issue in this dispute are simply a subset of United States response costs, which are to be paid by consensual agreement, rather than as a result of adjudicated liability. Many courts have considered the question of what documentation suffices to establish the amount of response costs incurred, both as a general matter of proof and accounting, as well as with respect to the cost documentation provisions of the NCP. These cases are unanimous that the cost summaries generated by EPA's accounting system, which are underlain by documentation of the project manager's approval of contractor invoices resulting from performance of required tasks, demonstrate that response costs were incurred and that EPA paid such costs to contractors, without the need to resort to any of the contractor's own documentation of the costs the contractor incurred in performing its contractual obligations.

In any event, EPA has done more in the instant dispute, by providing such contractor documentation. The cost summaries, along with the MSR sections already provided to OPOG are squarely within the type of documentation that is consistent with the NCP, and OPOG has no right to additional documentation.

D. EPA should not be required to provide the timesheets OPOG requests, because the benefit of providing the timesheets is greatly outweighed by the burden upon the agency.

1. Hill's timesheets would provide extremely limited information.

As noted above, the only additional piece of information that OPOG will be able to glean from reviewing Hill's weekly timesheets is the understanding of what particular day a Hill employee billed the hours that are already accounted for in both the narrative summary and Report 1 sections of the MSR. (OPOG can already discern the month in which that employee performed the work in question.) According to Hill, its employees sometimes make notations on their timesheets or elsewhere to assist them in the monthly preparation of the MSR, although this is neither a required nor customary practice. These notations, because they are incorporated into the MSR, are already in the information package OPOG possesses.

2. Other than timesheets, there is no other time entry information Hill employees compile.

Hill does not require its employees to compile any other underlying data pertaining to timesheets in the regular course of business. Hill employees are asked to enter their time into the electronic time entry system on a daily basis. When employees are in the field, they may make notations in a field log or in a separate notebook to ensure accuracy in recording their time. Other employees may decide not to do so; they simply enter their time into Hill's electronic timekeeping system. In any event, OPOG's assertion that "EPA could easily and immediately

resolve this matter by requiring Hill to provide to OPOG the underlying timesheets . . . along with the hourly and cost information supporting these bills" is inaccurate. OPOG Statement at p.7. There is no such underlying information gathered by Hill.⁴

3. The burden on EPA greatly outweighs the minimal additional information provided by timesheets.

This Statement may not be the proper forum for EPA to opine on how cost-effective it would be for OPOG to annually review all of Hill's timesheets in the hope that OPOG can learn something additional related to a Hill employee's work; however, it is imperative that the burden upon EPA from providing the timesheets be fully considered. Although OPOG suggests that EPA would not have to do anything further than require Hill to provide the timesheets, in reality, the agency's statutory responsibilities would necessitate a review of each timesheet to determine whether there is confidential information that needs to be redacted or that should not be revealed even under a confidentiality agreement, such as employee's social security number or other personal privacy information.

Because EPA does not currently receive or review Hill's individual timesheets, this would be a significant increased burden on the agency's employees' time. An even greater concern would be that, by providing contractor timesheets or other "underlying" background information prepared by Hill, a precedent would be set, after which other PRP groups could seek a similar privilege. EPA could be exposed to future challenges under existing consent decrees, or arguments when negotiating consent decrees, that EPA must make contractor timesheets or other contractor documents available. For purposes of regional and national consistency, and in the interest of spending agency time and money on cleaning up contaminated sites, rather than on needlessly reviewing cost documentation, EPA should not be required to collect and review Hill's timesheets or provide them to OPOG.

E. There are several quality assurance controls in both Hill's and EPA's review of Hill's costs, which greatly reduce the need for the provision of timesheets.

There are built-in protections that help ensure that contractor and EPA costs are accurately recorded, and that greatly diminish the need for further documentation. In an email to OPOG, EPA summarized Hill's internal quality assurance process, and EPA's review of Hill's bills, both of which ensure the accuracy of Hill's bills and safeguard against accounting errors. As described in the February 12, 2007 email (Exhibit 6):

⁴ For the reasons discussed in this Statement, individual employees' field logs or other work papers on which they may have noted a task or timeframe for the task performed are clearly not information that is legally required.

[Hill's e]mployees complete electronic timesheets on a weekly basis, which are reviewed and approved by that employee's supervisor, also on a weekly basis. . .

At the end of each billing cycle (i.e., the end of each month), preliminary invoice data are collected and are reviewed by a project accountant assigned to the contract. The data are uploaded to an internal contract website, organized by work assignment and task/subtask. The site manager is notified when the data are uploaded, who then reviews the charges. The contract administrator also reviews the data at this time. If any inaccurate or questionable charges are identified, appropriate measures are taken (e.g., data could be transferred to the correct project, if necessary, or held for further investigation).

When the data are ready for the final invoice, another notice is sent to the site manager, who again reviews the data, and prepares the monthly status report (MSR). In preparing the MSR, the site manager explains and incorporates all charges except those in the office staff and clerical categories. If mistakes are identified after the final invoice data is uploaded to the website, a notation is made in the MSR that the time/charges will be corrected/adjusted on the next invoice.⁵

In addition, Hill certifies each invoice under the RAC, specifically certifying "that all payments requested are appropriate and in accordance with the agreement set forth in the contract; that payments have been made to all construction subcontractors from previous payments, and that timely payments will be made from proceeds covered by this certification."

However, an even larger framework for ensuring the accuracy of contractor costs is in place. Before beginning any work assignment, EPA contractors submit work plans with initial estimates of hours and costs required to complete each task. The EPA project manager reviews

⁵ OPOG, in its Statement of Position, stated "... it is unclear from the above description how Hill identifies 'inaccurate or questionable charges' and what measures Hill takes to fix any problems it may find." OPOG also stated that it was "unclear what 'further investigation' entails and who does such further investigation."

Hill may identify "inaccurate or questionable charges" in various ways. One such way occurs when the contract administrator reviews data that has been uploaded to Hill's internal website. The administrator may notice, for example, that there are hours inappropriately charged to a subtask (e.g., because the work under that subtask was already complete the prior month). Alternatively, the administrator may notice that a particular employee is charging to the wrong subtask, or that there are shipping charges on a task that has no labor charges to date.

In such cases, the administrator contacts the site manager and the project accountant, describing the charges in question and the reason why the administrator believes an error has occurred. The site manager may know whether or not such charges are correct, or may need to investigate those specific charges further (e.g., by speaking to an employee about hours charged or requesting copies of source documents for non-labor charges). The ultimate fate of the time entry depends on whether there was an error and, if there was, what kind of error. The employee's hours may be moved to the correct subtask or to a different work assignment, or the administrator and project accountant may be informed that the employee's time was actually expended, but that the hours were on a timesheet that was submitted late.

If a transfer of time within the same project was required, the project accountant would prepare a journal entry and move the time charged to the correct subtask. If a transfer to a different project was required, the project accountant would forward the site manager's transfer request (which would also include an approval from the applicable employee) to the site manager for the different project, to gain that site manager's approval via reply email. The accounting supervisor would then review and approve the correction, and a journal entry would complete the transfer. Alternatively, if the time had been entered to the wrong project, and that different project was not an EPA project, the charge would be held (and not invoiced) if the site manager for the non-EPA project was not available to provide approval for the requested transfer. Ultimately, the time would be transferred to the appropriate account.

the MSRs that Hill submits to EPA each month and also has frequent discussions with Hill (primarily the Site Manager) regarding the work that Hill does. The project manager reviews the MSRs and associated monthly invoice for the particular work assignment to insure that the actual work performed and costs incurred for each work assignment (including the personnel involved and hours billed) are appropriate and consistent with the schedule and budget that previously was developed. In so doing, the project manager reviews and determines the progress and status of each task towards its objective, reviews total expenditures for the current period, and estimates for the succeeding period. Any individual charges that significantly deviate from the estimates in the work plan budget would be a cause for a closer evaluation by the project manager. At the end of billing period, EPA accounting personnel compile the financial cost summary, which is ultimately forwarded to the EPA Region 9 Superfund Division's cost recovery group for a page-by-page review to verify that the information is consistent with the costs and services described in the work-performed documentation. The project manager and site attorney also review the cost summary to ensure that it contains the appropriate site and, in this case, operable unit costs. EPA's internal contract review was previously summarized in a letter to OPOG on April 13, 2005 (see Exhibit 6).

In addition, for all EPA contracts, government contractor requirements, including audits, provide a further systemic assurance that contractor costs are accurately recorded, and serve as a deterrent to EPA contractors that may consider inappropriate billing practices. The Office of Inspector General and General Accountability Office audit contractor practices on a periodic basis to ensure against fraud and defects in contractors' billing practices. The mere fact that Hill is subject to audit reduces the risk of fraud and provides incentives to Hill for accurate bills.

Finally, EPA disagrees with OPOG that the cost reimbursement system is faulty because EPA has no incentive to scrutinize the bills that OPOG, rather than EPA, pays. On Fund-lead cleanups, EPA utilizes a system that is the same as the system in place for bills paid by PRPs.⁶

IV. Conclusion

OPOG is required by the Partial CD to pay oversight costs thereunder. EPA has provided OPOG with even more documentation than what is required by the Partial CD; the

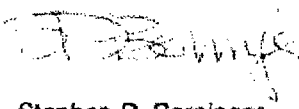
⁶ EPA also takes issue with OPOG's characterization of response costs as "unreasonably high", a characterization it does nothing to substantiate. OPOG points out that contractor oversight costs have "nearly doubled" from the 2003-04 billing period, but fails to mention that the scope of work has also significantly increased. During the 2004-05 billing period, OPOG conducted an indoor air investigation, groundwater investigation and corresponding Engineering Evaluation/Cost Analysis (EE/CA), and a vadose zone Remedial Investigation (RI) simultaneously; the indoor air investigation and EE/CA were initiated during the 2004-2005 billing period. The 2005-06 billing period included each of these activities or a supplemental activity. OPOG has categorically stated, and EPA agrees, that these activities are all within the scope of the Partial CD. For these reasons, the increase in EPA's oversight bill relative to the 2003-04 bill is neither unreasonable, nor should it have been unexpected.

documentation provided is more than adequate to verify the accuracy of the 2005-06 charges. EPA has a process for determining whether Hill charges are appropriate, and has followed that process for the 2005-06 oversight bill. Contrary to OPOG's statement, EPA independently reviews all available contractor information to determine if accounting or other errors have been made. EPA has provided to OPOG all documents upon which EPA relies, and all documents that Hill regularly compiles. This documentation is above and beyond that which EPA typically requires from its contractors, and is adequate under the NCP and case law. Because the burden of providing timesheets outweighs the benefit of providing them, and because EPA is not required to provide them, the Director of EPA's Region 9 Superfund Division should deny OPOG's request that EPA provide them.

DATED this 26th day of March, 2007

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By:



Stephen D. Berninger
Assistant Regional Counsel

Exhibit 1

1110-00193

0004

1 LOIS SCHIFFER
 2 Assistant Attorney General
 3 U.S. Department of Justice
 4 Environment & Natural Resources Division

COPY FOR THE JUDGE

SFUND RECORDS CTR
95488

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13 IN THE UNITED STATES DISTRICT COURT
 14 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 15 WESTERN DIVISION

16 UNITED STATES OF AMERICA,
 17 Plaintiff,

18 v.

00-12471-JEH

19 ABEX AEROSPACE DIVISION and PNEUMO-
 20 ABEX CORPORATION; AIR PRODUCTS AND
 21 CHEMICALS, INC.; ALCOA INC.;
 22 ALLIEDSIGNAL, INC. (now known as
 23 HONEYWELL INTERNATIONAL, INC.);
 24 ALPHA THERAPEUTIC CORPORATION;
 25 APPLIED MICRO CIRCUITS CORPORATION;
 26 APPROPRIATE TECHNOLOGIES II, INC.;
 27 ARLO ADHESIVES & FILM; ARMOR ALL
 28 PRODUCTS CORPORATION; AVERY
 DENNISON CORPORATION; BASF
 CORPORATION; BAXTER HEALTHCARE
 CORPORATION; BOEING NORTH AMERICA,
 INC.; BONANZA ALUMINUM CORP.; BORDEN,
 INC.; BOURNS, INC.; BROADWAY STORES,
 INC.; CALIFORNIA DEPT. OF
 TRANSPORTATION; CALSONIC CLIMATE
 CONTROL, INC. (now known as CALSONIC
 NORTH AMERICA, INC.); CANON BUSINESS
 MACHINES, INC.; INTERNATIONAL PAPER
 COMPANY; WASTE MANAGEMENT, INC.;
 UNITED DOMINION INDUSTRIES; CITY OF
 LOS ANGELES, DEPARTMENT OF AIRPORTS;
 CITY OF SANTA MARIA; COUNTY OF LOS
 ANGELES; CROSBY & OVERTON, INC.;
 DATATRONICS ROMOLAND, INC.; DEUTSCH
 ENGINEERED CONNECTING
 DEVICES/DEUTSCH GAV; DISNEYLAND

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ENTERED CLERK, U.S. DISTRICT COURT FEB 28 2001 CENTRAL DISTRICT OF CALIFORNIA BY DEPUTY

- 1 -

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 MAR 7 2001

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4 United States Department of Justice

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1110-00193

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 ABEX AEROSPACE DIVISION and PNEUMO-ABEX
15 CORPORATION; AIR PRODUCTS AND CHEMICALS,
16 INC.; ALCOA INC.; ALLIEDSIGNAL, INC. (now known
17 as HONEYWELL INTERNATIONAL, INC.); ALPHA
18 THERAPEUTIC CORPORATION; APPLIED MICRO
19 CIRCUITS CORPORATION; APPROPRIATE
20 TECHNOLOGIES II, INC.; ARLON ADHESIVES &
21 FILM; ARMOR ALL PRODUCTS CORPORATION;
22 AVERY DENNISON CORPORATION; BASF
23 CORPORATION; BAXTER HEALTHCARE
24 CORPORATION; BOEING NORTH AMERICA, INC.;
25 BONANZA ALUMINUM CORP.; BORDEN, INC.;
26 BOURNS, INC.; BROADWAY STORES, INC.;
27 CALIFORNIA DEPT. OF TRANSPORTATION;
28 CALSONIC CLIMATE CONTROL, INC. (now known as
CALSONIC NORTH AMERICA, INC.); CANON
BUSINESS MACHINES, INC.; INTERNATIONAL
PAPER COMPANY; WASTE MANAGEMENT, INC.;
UNITED DOMINION INDUSTRIES; CITY OF LOS
ANGELES, DEPARTMENT OF AIRPORTS; CITY OF
SANTA MARIA; COUNTY OF LOS ANGELES;
CROSBY & OVERTON, INC.; DATATRONICS
ROMOLAND, INC.; DEUTSCH ENGINEERED
CONNECTING DEVICES/DEUTSCH GAV;
DISNEYLAND CENTRAL PLANT; DOW CHEMICAL
COMPANY; FHL GROUP; FIRMENICH
INCORPORATED; FORENCO, INC.; GAMBRO, INC.;
GATX TERMINALS CORPORATION; GENERAL
DYNAMICS CORPORATION; GEORGE INDUSTRIES;
GOLDEN WEST REFINING COMPANY; GREAT

NOTICE OF LODGING OF
CONSENT DECREE

Civil No:

1 WESTERN CHEMICAL COMPANY; GSF ENERGY,
 2 L.L.C. (successor to GSF ENERGY, INC.);
 3 GULFSTREAM AEROSPACE CORPORATION;
 4 HEXCEL CORPORATION; HILTON HOTELS
 5 CORPORATION; HITACHI HOME ELECTRONICS
 6 (AMERICA), INC.; BP AMERICA INC.; HONEYWELL
 7 INTERNATIONAL INC.; HUBBEL INC.; HUCK
 8 MANUFACTURING COMPANY (by its former parent
 9 Federal Mogul Corporation); HUGHES SPACE AND
 10 COMMUNICATIONS COMPANY; HUNTINGTON
 11 PARK RUBBER STAMP COMPANY;
 12 INTERNATIONAL RECTIFIER CORPORATION; JAN-
 13 KENS ENAMELING COMPANY; JOHNS MANVILLE
 14 INTERNATIONAL, INC.; K.C. PHOTO ENGRAVING
 15 CO.; KESTER SOLDER DIVISION, LITTON SYSTEMS,
 16 INC.; KIMBERLY CLARK WORLDWIDE, INC.;
 17 KOLMAR LABORATORIES, INC.; LOS ANGELES
 18 COUNTY METROPOLITAN TRANSPORTATION
 19 AUTHORITY; LOMA LINDA UNIVERSITY; BRITISH
 20 ALCAN ALUMINUM, P.L.C.; MATTEL, INC.;
 21 MAXWELL TECHNOLOGIES, INC.; THE MAY
 22 DEPARTMENT STORES COMPANY; McDONNELL
 23 DOUGLAS CORPORATION a wholly owned subsidiary of
 24 the BOEING COMPANY; MEDEVA
 25 PHARMACEUTICALS CA, INC. (f/k/as MD
 26 PHARMACEUTICAL INC.); METROPOLITAN WATER
 27 DISTRICT OF SOUTHERN CALIFORNIA; MICO INC.;
 28 MINNESOTA MINING AND MANUFACTURING
 COMPANY; QUALITY CARRIERS INC. (f/k/a
 MONTGOMERY TANK LINES, INC.); NI INDUSTRIES
 (a division of TRIMAS, a wholly owned subsidiary of
 MASCO TECH); NMB TECHNOLOGIES CORP.;
 OHLINE CORP.; OJAI MANUFACTURING
 TECHNOLOGY, INC.; SIEMENS MEDICAL SYSTEMS,
 INC.; PACIFIC BELL TELEPHONE COMPANY;
 PACIFIC GAS & ELECTRIC CO.; PIONEER VIDEO
 MANUFACTURING INC.; PRINTED CIRCUITS
 UNLIMITED; NELLCOR PURTIAN-BENNETT; LONZA
 INC.; QUEST DIAGNOSTICS CLINICAL
 LABORATORIES, INC. (f/k/a BIO SCIENCE
 ENTERPRISES); RATHON CORP. (f/k/a DIVERSEY
 CORP.); RAYTHEON COMPANY; REGENTS OF THE
 UNIVERSITY OF CALIFORNIA; REICHOLD INC.;
 REMET CORPORATION; RESINART CORP.;
 ROBINSON PREZIOSO INC.; ROGERS
 CORPORATION; SAFETY-KLEEN SYSTEMS, INC.
 (f/k/a SAFETY-KLEEN CORP.); SCRIPTO-TOKAI
 CORPORATION; SHELL OIL COMPANY; THE
 SHERWIN-WILLIAMS COMPANY; SIGMA CASTING
 CORPORATION (now known as HOWMET ALUMINUM
 CASTING, INC.); SIGNET ARMORLITE, INC.;
 SOUTHERN CALIFORNIA EDISON CO.; SOUTHERN
 PACIFIC TRANSPORTATION CO. (now known as
 UNION PACIFIC RAILROAD COMPANY); HARSCO
 CORPORATION; BHP COATED STEEL CORP.;

1 TELEDYNE INDUSTRIES INC.; TELEDYNE
2 TECHNOLOGIES INCORPORATED; TENSION
3 ENVELOPE CORP.; TEXACO INC.; TEXAS
4 INSTRUMENTS TUCSON CORPORATION (f/k/a
5 BURR-BROWN CORP.); TITAN CORPORATION;
6 TODD PACIFIC SHIPYARDS; TREASURE CHEST;
7 PACIFIC PRECISION METALS, INC.; UNION OIL
8 COMPANY OF CALIFORNIA; UNITED PARCEL
9 SERVICE, INC.; UNIVERSAL CITY STUDIOS, INC.;
10 VAN WATERS & ROGERS INC. and VOPAK
11 DISTRIBUTION AMERICAS CORPORATION (f/k/a
12 UNIVAR CORPORATION); VERTEX MICROWAVE
13 PRODUCTS, INC. (f/k/a GAMMA-F CORP.); WALT
14 DISNEY PICTURES AND TELEVISION; WARNER-
15 LAMBERT COMPANY; WEBER AIRCRAFT;
16 WESTERN METAL DECORATING CO.; YORK
17 INTERNATIONAL CORPORATION; YORT INC. (f/k/a
18 TROY LIGHTING, INC. - TIFFANY DIVISION);
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

Defendants.

NOTICE OF LODGING OF CONSENT DECREE

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, are today lodging a Consent Decree. The Consent Decree resolves the liability of the above-named defendants under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, as amended, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, as alleged in the complaint filed in this matter.

The United States respectfully states and requests the following:

- i. A Consent Decree, signed by the United States and the above-referenced defendants is submitted today for lodging only;
- ii. Pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, and 28 C.F.R. § 50.7, before entry of the Consent Decree, the Decree is lodged with the Court, and notice of lodging is published in the Federal Register;

1 iii. 28 C.F.R. § 50.7 further provides that the United States not move for entry
2 of the Decree until the close of the public comment period, in order to allow
3 opportunity for public review and comment;

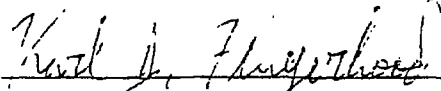
4 iv. If, upon completion of the public comment period, the United States
5 continues to consent to the proposed judgment, as contained in the Decree,
6 the United States will move for final approval of the Consent Decree;

7 WHEREFORE, the United States respectfully requests that this Court receive the Consent
8 Decree for lodging only, and that it abstain from acting upon the same until the time for public
9 comment has expired and the United States has moved for entry of the Consent Decree.

10
11
12 DATED: November 21, 2000

13 Respectfully submitted,
14 FOR THE UNITED STATES OF AMERICA

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16 Assistant Attorney General
17 Environment & Natural Resources Division
18 U.S. Department of Justice
19 Washington, D.C. 20530

20 
21 KARL J. FINGERHOOD
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13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16 **UNITED STATES OF AMERICA,**

17 **Plaintiff,**

18 **v.**

19 **ABEX AEROSPACE DIVISION and PNEUMO-**
20 **ABEX CORPORATION; AIR PRODUCTS AND**
21 **CHEMICALS, INC.; ALCOA INC.;**
22 **ALLIEDSIGNAL, INC. (now known as**
23 **HONEYWELL INTERNATIONAL, INC.);**
24 **ALPHA THERAPEUTIC CORPORATION;**
25 **APPLIED MICRO CIRCUITS CORPORATION;**
26 **APPROPRIATE TECHNOLOGIES II, INC.;**
27 **ARLON ADHESIVES & FILM; ARMOR ALL**
28 **PRODUCTS CORPORATION; AVERY**
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CORPORATION; BAXTER HEALTHCARE
CORPORATION; BOEING NORTH AMERICA,
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28 COUNTY METROPOLITAN TRANSPORTATION
AUTHORITY; LOMA LINDA UNIVERSITY;
BRITISH ALCAN ALUMINUM, P.L.C.; MATTEL,
INC.; MAXWELL TECHNOLOGIES, INC.; THE
MAY DEPARTMENT STORES COMPANY;
McDONNELL DOUGLAS CORPORATION a
wholly owned subsidiary of the BOEING
COMPANY; MEDEVA PHARMACEUTICALS
CA, INC. (f/k/as MD PHARMACEUTICAL INC.);
METROPOLITAN WATER DISTRICT OF
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LABORATORIES, INC. (f/k/a BIO SCIENCE

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9 TOKAI CORPORATION; SHELL OIL
10 COMPANY; THE SHERWIN-WILLIAMS
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12 (now known as HOWMET ALUMINUM CASTING,
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14 CALIFORNIA EDISON CO.; SOUTHERN
15 PACIFIC TRANSPORTATION CO. (now known as
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18 STEEL CORP.; TELEDYNE INDUSTRIES INC.;
19 TELEDYNE TECHNOLOGIES
20 INCORPORATED; TENSION ENVELOPE
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22 TUCSON CORPORATION (f/k/a BURR-BROWN
23 CORP.); TITAN CORPORATION; TODD
24 PACIFIC SHIPYARDS; TREASURE CHEST;
25 PACIFIC PRECISION METALS, INC.; UNION
26 OIL COMPANY OF CALIFORNIA; UNITED
27 PARCEL SERVICE, INC.; UNIVERSAL CITY
28 STUDIOS, INC.; VAN WATERS & ROGERS INC.
and VOPAK DISTRIBUTION AMERICAS
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CORPORATION); VERTEX MICROWAVE
PRODUCTS, INC. (f/k/a GAMMA-F CORP.);
WALT DISNEY PICTURES AND TELEVISION;
WARNER-LAMBERT COMPANY; WEBER
AIRCRAFT; WESTERN METAL DECORATING
CO.; YORK INTERNATIONAL CORPORATION;
YORT INC. (f/k/a TROY LIGHTING, INC. -
TIFFANY DIVISION);

Defendants.

CONSENT DECREE

1 **I. BACKGROUND**

2 **A. The United States of America, on behalf of the Administrator of the United**
3 **States Environmental Protection Agency, filed a complaint in this matter pursuant to**
4 **Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and**
5 **Liability Act.**

6 **B. The United States in its complaint seeks, inter alia: (1) reimbursement of**
7 **costs incurred by the EPA and the Department of Justice for response actions at the Omega**
8 **Chemical Corporation Superfund Site in Whittier, California, together with accrued**
9 **Interest; and (2) performance of studies and Work by the Settling Work Defendants at the**
10 **Site consistent with the National Contingency Plan.**

11 **C. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. Section**
12 **9622(j)(1), the EPA notified the Federal natural resource trustee on July 21, 1999 of**
13 **negotiations with potentially responsible parties regarding the release of hazardous**
14 **substances that may have resulted in injury to the natural resources under Federal**
15 **trusteeship and encouraged the trustee to participate in the negotiation of this Consent**
16 **Decree.**

17 **D. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C.**
18 **Section 9621(f)(1)(F), the EPA notified the State of California on April 16, 1999 of**
19 **negotiations with potentially responsible parties regarding the implementation of the**
20 **response actions to be performed at the Site, and the EPA has provided the State with an**
21 **opportunity to participate in such negotiations and be a party to this Consent Decree.**

22 **E. The EPA issued Unilateral Administrative Order 95-15 on May 9, 1995 and**
23 **amended the same in September 1995. Among other things, the UAO required the removal**
24 **of various containers of materials and decommissioning of certain equipment at the Omega**
25 **Property. The second phase of the UAO also required an investigation of the extent of soil**
26 **and groundwater contamination at or from the Omega Property. In response to the UAO,**
27 **the Settling Defendants undertook to characterize and remove the various containers from**
28 **the Omega Property, decommission equipment, remove grossly contaminated soils and**
began the investigation of the extent of any soil and groundwater contamination. The
Settling Defendants also have undertaken additional groundwater investigation activities at
the Site.

F. On April 1, 1999, the EPA issued Special Notice Letters to a group of
potentially responsible parties in connection with the Site, including the Settling
Defendants. On May 28, 1999, the Settling Defendants submitted a good-faith response to
the Special Notice Letter.

G. The Settling Defendants that have entered into this Consent Decree do not
admit any liability to the United States or any other person or entity related to the Site or
arising out of the matters alleged in the complaint, nor do they acknowledge that the
release or threatened release of hazardous substance(s) at or from the Site constitutes an
imminent or substantial endangerment to the public health or welfare or the environment.
The Settling Federal Agency does not admit any liability arising out of the transactions or
occurrences alleged in any counterclaim asserted by the Settling Defendants.

1 H. Pursuant to Section 105 of CERCLA, 42 U.S.C. Section 9605, the EPA placed
2 the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by
publication in the Federal Register on January 19, 1999, 64 Fed. Reg. 2950.

3 I. As a result of the information obtained pursuant to the UAO, an Outline to a
4 Statement of Work was prepared jointly by the Settling Defendants and the EPA. The
Outline to the Statement of Work presented a framework for the final Statement of Work,
5 which is attached hereto as Appendix A.

6 J. Pursuant to the attached Statement of Work, the Settling Work Defendants
have agreed to perform the Work as set forth therein.

7 K. Based on the information presently available to the EPA, the EPA believes
8 that the Work will be properly and promptly conducted by the Settling Work Defendants if
conducted in accordance with the requirements of this Consent Decree and its Appendices.

9 L. Solely for the purposes of Section 113(j) of CERCLA, the Work to be
10 performed by the Settling Work Defendants shall constitute a response action taken or
ordered by the President.

11 M. The Parties recognize, and the Court by entering this Consent Decree finds,
12 that this Consent Decree has been negotiated by the Parties in good faith and
implementation of this Consent Decree will expedite the cleanup of the Site and will avoid
13 prolonged and complicated litigation between the Parties, and that this Consent Decree is
fair, reasonable, and in the public interest.

14 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

15 **II. JURISDICTION**

16 1. This Court has jurisdiction over the subject matter of this action pursuant to
17 28 U.S.C. Sections 1331 and 1345, and 42 U.S.C. Sections 9606, 9607, and 9613(b). This
Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes
18 of this Consent Decree, the Settling Defendants waive all objections and defenses that they
may have to jurisdiction of the Court or to venue in this District. The Settling Defendants
19 shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree.

20 **III. PARTIES BOUND**

21 2. This Consent Decree applies to and is binding upon the United States and
upon the Settling Defendants and their respective successors and assigns. Any change in
22 ownership or corporate status of a Settling Defendant including, but not limited to, any
transfer of assets or real or personal property, shall in no way alter such Settling
23 Defendant's responsibilities under this Consent Decree.

24 3. The Settling Work Defendants shall provide a copy of this Consent Decree to
each contractor hired to perform the Work required by this Consent Decree and to each
25 person representing any Settling Work Defendant with respect to the Site or the Work and
shall condition all contracts entered into hereunder upon performance of the Work in
26 conformity with the terms of this Consent Decree. The Settling Work Defendants or their
contractors shall provide written notice of the Consent Decree to all subcontractors hired
27 to perform any portion of the Work required by this Consent Decree. The Settling Work

1 Defendants shall nonetheless be responsible for ensuring that their contractors and
2 subcontractors perform the Work contemplated herein in accordance with this Consent
3 Decree. With regard to the activities undertaken pursuant to this Consent Decree, each
4 contractor and subcontractor shall be deemed to be in a contractual relationship with the
5 Settling Work Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C.
6 Section 9607(b)(3).

7 IV. DEFINITIONS

8 4. Unless otherwise expressly provided herein, terms used in this Consent
9 Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall
10 have the meaning assigned to them in CERCLA or in such regulations. Whenever terms
11 listed below are used in this Consent Decree or in the appendices attached hereto and
12 incorporated hereunder, the following definitions shall apply:

13 "CERCLA" shall mean the Comprehensive Environmental Response,
14 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq.

15 "Complaint" shall mean the Complaint filed by the United States, Civil
16 Action No. _____.

17 "Consent Decree" shall mean this Consent Decree and all appendices
18 attached hereto which are incorporated into this Consent Decree as noted. In the event of
19 conflict between this Consent Decree and any appendix, this Consent Decree shall control.

20 "Date of Entry" shall mean the date this Consent Decree is signed and
21 entered by a United States District Court Judge for the Central District of California.

22 "Day" shall mean a calendar day unless expressly stated to be a Working
23 Day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday.
24 In computing any period of time under this Consent Decree, where the last day would fall
25 on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business
26 of the next Working Day.

27 "EE/CA" shall mean the engineering evaluation and cost analysis to be
28 performed by the Settling Work Defendants pursuant to this Consent Decree, and in
accordance with the EPA's "Guidance on Conducting Non-Time-Critical Removal Actions
Under CERCLA" (OSWER Dir. #9390.0-32, August 1993).

"EPA" shall mean the United States Environmental Protection Agency and
any successor departments or agencies of the United States.

"Interest" shall mean interest at the rate specified for interest on investments
of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of
Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42
U.S.C. Section 9607(a).

"National Contingency Plan" or "NCP" shall mean the National Oil and
Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of
CERCLA, 42 U.S.C. Section 9605, codified at 40 C.F.R. Part 300, and any amendments
thereto.

1 "Omega Property" shall mean that portion of the Omega Chemical
2 Corporation Superfund Site, consisting of the Omega Chemical Corporation property,
3 encompassing approximately one acre, located at 12504 and 12508 East Whittier
4 Boulevard, Whittier, California, Los Angeles County, California.

5 "Operation and Maintenance" or "O & M" shall mean any activities
6 required under the Operation and Maintenance Plan approved or developed by the EPA
7 pursuant to this Consent Decree and the Statement of Work.

8 "Oversight Costs" shall mean all direct and indirect costs, not inconsistent
9 with the NCP, that the United States incurs in connection with the Work required by this
10 Consent Decree, including costs incurred in reviewing or developing plans, reports and
11 other items pursuant to this Consent Decree, verifying the Work, or otherwise
12 implementing, overseeing, or enforcing this Consent Decree, including, but not limited to,
13 contractor costs, travel costs, laboratory costs, together with Interest as due. Oversight
14 Costs shall not include costs incurred directly or indirectly by the State, with the exception
15 of costs incurred after entry of this Consent Decree in providing oversight services in
16 accordance with an agreement with EPA for the specific provision of such service.

17 "Paragraph" shall mean a portion of this Consent Decree identified by an
18 Arabic numeral or an upper case letter.

19 "Parties" shall mean the United States, the Settling Federal Agency and the
20 Settling Defendants, all of whom are signatories hereto.

21 "Past Response Costs" shall mean all direct and indirect response costs not
22 inconsistent with the NCP that the United States paid at or in connection with the Site
23 through May 31, 1999, plus Interest. Such Past Response Costs shall not include any costs
24 incurred by the State in connection with, or otherwise related to, the Site.

25 "Performance Standards" shall mean:

- 26 (i) vertical and lateral hydraulic containment of groundwater
27 contamination within the Phase 1a Area, primary
28 documentation of such containment shall occur via piezometric
monitoring;
- 29 (ii) air emissions standards as will be specified in or required by
30 EPA's Action Memorandum; and
- 31 (iii) treatment standards appropriate to expected use or reuse of
32 the extracted groundwater as will be specified in or required
33 by EPA's Action Memorandum.

34 "Phase 1a Area" shall mean the area of soil and groundwater contamination
35 associated with the Omega Property and extending downgradient approximately 100 feet
36 southwest of Putnam Street, Whittier, California. Such area is represented graphically in
37 Appendix B, and is incorporated by reference herein.

38 "Plaintiff" shall mean the United States.

1 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
2 Sections 6901 et seq. (also known as the Resource Conservation and Recovery Act).

3 "RI/FS" shall mean the Remedial Investigation and Feasibility Study set
4 forth in the SOW.

5 "Section" shall mean a portion of this Consent Decree identified by a roman
6 numeral.

7 "Settling Cash Defendants" shall mean those Parties listed in Appendix C,
8 who are signatories to this Consent Decree, who will participate in this Consent Decree
9 with the other Parties to this Consent Decree primarily through cash payments, and are not
10 involved in performing the Work under this Consent Decree. The term "Settling Cash
11 Defendant" shall also apply to certain affiliates of each Settling Cash Defendant: where the
12 Settling Cash Defendant is a trust, its trustees and successor trustees appointed to carry out
13 the purposes of said trust; where the Settling Cash Defendant is a corporate entity, its
14 corporate successors to potential liability for the Site; and where the Settling Cash
15 Defendant is a partnership, its partners. However, the term "Settling Cash Defendant"
16 shall not include any person or entity with liability for the Site independent of that person's
17 or entity's affiliation with a Settling Cash Defendant, including liability for Waste Material
18 which has not been attributed to a Settling Cash Defendant.

19 "Settling Work Defendants" shall mean those Parties identified in
20 Appendix D, who are signatories to this Consent Decree, who are required to perform the
21 Work, whether they perform the Work by themselves or through any legal entity that they
22 may establish to perform the Work. The term "Settling Work Defendant" shall also apply
23 to certain affiliates of each Settling Work Defendant: where the Settling Work Defendant is
24 a trust, its trustees and successor trustees appointed to carry out the purposes of said trust;
25 where the Settling Work Defendant is a corporate entity, its corporate successors to
26 potential liability for the Site; and where the Settling Work Defendant is a partnership, its
27 partners. However, the term "Settling Work Defendant" shall not include any person or
28 entity with liability for the Site independent of that person's or entity's affiliation with a
Settling Work Defendant, including liability for Waste Material which has not been
attributed to a Settling Work Defendant.

"Settling Defendants" shall mean the Settling Work Defendants and Settling
Cash Defendants.

"Settling Federal Agency" shall mean the United States Navy, which is
resolving any claims which have been or could be asserted against it with regard to the
Work as provided in this Consent Decree.

"Site" shall mean the Omega Chemical Corporation Superfund Site listed on
the National Priorities List on January 19, 1999, 64 Fed. Reg. 2950.

"State" shall mean the State of California and any agencies or
instrumentalities thereof.

"Statement of Work" or "SOW" shall mean the document attached hereto
as Appendix A.

"Supervising Contractor" shall mean the principal contractor retained by

1 the Settling Work Defendants to supervise and direct the implementation of the Work
2 under this Consent Decree.

3 "UAO" shall mean the Unilateral Administrative Order No. 95-15 issued by
4 the EPA on May 9, 1995, as amended in September 1995.

5 "United States" shall mean the United States of America and any agencies,
6 departments, or instrumentalities thereof, which includes without limitation EPA, and the
7 Settling Federal Agency

8 "Waste Material" shall mean (1) any "hazardous substance" under Section
9 101(14) of CERCLA, 42 U.S.C. Section 9601(14); (2) any pollutant or contaminant under
10 Section 101(33), 42 U.S.C. Section 9601(33); (3) any "solid waste" under Section 1004(27)
11 of RCRA, 42 U.S.C. Section 6903(27); and (4) or as any of the foregoing terms are defined
12 under any appropriated or applicable provisions of California law.

13 "Work" shall mean the response actions which the Settling Work
14 Defendants are required to perform under this Consent Decree, to wit (i) conduct an
15 Engineering Evaluation/Cost Analysis (EE/CA); (ii) implement the response action within
16 the Phase 1a Area to be selected in the EPA Action Memorandum; (iii) implement a soils
17 Remedial Investigation/Feasibility Study (RI/FS) for contamination in the vadose zone
18 within the Phase 1a Area; (iv) perform a risk assessment for potential contamination
19 resulting from the release or threatened release of hazardous substances from the Omega
20 Property within the Phase 1a Area; and (v) install three groundwater monitoring wells at
21 two or three locations downgradient of the Phase 1a Area and upgradient of water supply
22 well 30R3, each as further described in the SOW. The soils RI/FS and risk assessment
23 required under (iii) and (iv) above will be focused on the Omega Property itself. If,
24 however, data are obtained during the RI/FS which indicate that soil or soil vapor
25 contamination exists on adjacent properties is attributable to releases on the Omega
26 Property, then investigations would extend to these off-site areas.

27 V. GENERAL PROVISIONS

28 5. Objectives of the Parties.

The objectives of the Parties in entering into this Consent Decree are: (i) to
protect public health, welfare and the environment by performing the Work; (ii) to
reimburse Past Response Costs of the Plaintiff; and (iii) to partially resolve the claims of
Plaintiff against Settling Defendants, and the claims of the Settling Defendants which have
been or could have been asserted against the Settling Federal Agency with respect to the
Work, each as provided for herein.

6. This Consent Decree requires the Settling Work Defendants to conduct the
Work in accordance with all workplans approved by EPA under this Consent Decree, to
meet the Performance Standards specified herein and to perform all O&M activities
required by the Operation and Maintenance Plan approved or developed by the EPA.

VI. PERFORMANCE BY SETTLING DEFENDANTS

7. Commitments by the Settling Defendants and Settling Federal Agency.

1 a. The Settling Work Defendants shall perform the Work in accordance
2 with this Consent Decree, the SOW, and all work plans and other plans, standards,
3 specifications, and schedules set forth herein or developed by the Settling Work Defendants
4 and approved by the EPA pursuant to this Consent Decree, as well as any modifications
5 made thereto pursuant to the terms of this Consent Decree. The Settling Work Defendants
6 shall continue to implement the Work and perform O&M until the Performance Standards
7 are achieved and for so long thereafter as is otherwise required by this Consent Decree.
8 The Settling Work Defendants shall also reimburse the United States for Past Response
9 Costs and Oversight Costs as provided in this Consent Decree.

10 b. The obligations of the Settling Work Defendants to perform the Work
11 and the obligation of the Settling Work Defendants to pay amounts owed the United States
12 under this Consent Decree are joint and several. In the event of the insolvency or other
13 failure of any one or more Settling Work Defendants to implement the requirements of this
14 Consent Decree, the remaining Settling Work Defendants shall complete all such
15 requirements.

16 c. The Settling Cash Defendants shall cooperate with the EPA and the
17 Settling Work Defendants to effectuate the purposes of this Consent Decree, including, but
18 not limited to, those obligations set forth in Section XV (Obligations of Settling Cash
19 Defendants).

20 8. Compliance With Applicable Law.

21 All activities undertaken by Settling Defendants pursuant to this Consent
22 Decree shall be performed in accordance with the requirements of all applicable Federal
23 and State laws and regulations. The Settling Work Defendants must also comply with all
24 applicable or relevant and appropriate requirements of all Federal and State laws as set
25 forth in the SOW or as otherwise authorized pursuant to this Consent Decree. The
26 activities conducted pursuant to this Consent Decree, if approved by the EPA, shall be
27 considered to be consistent with the NCP.

28 9. Permits.

1 a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of
2 the NCP, no permit shall be required for any portion of the Work conducted within the
3 Site or in close proximity and necessary for implementation of the Work. Where any
4 portion of the Work outside the Site requires a Federal or State permit or approval, the
5 Settling Work Defendants shall submit timely and complete applications and take all other
6 actions necessary to obtain all such permits or approvals. The EPA agrees to cooperate
7 with and assist the Settling Work Defendants in obtaining any necessary permits or
8 approvals.

9 b. The Settling Work Defendants may seek relief under the provisions of
10 Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of
11 the Work resulting from a failure to obtain, or a delay in obtaining, any permit required
12 for the Work.

13 c. This Consent Decree is not, and shall not be construed to be, a permit
14 issued pursuant to any Federal or State statute or regulation.

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1 in this Consent Decree, nor to waive the Settling Defendants' respective rights to oppose
2 any such requirements.

3 12. The Settling Defendants acknowledge and agree that nothing in this Consent
4 Decree or any appendices hereto constitutes a warranty or representation of any kind by
5 Plaintiff that compliance with the implementation of requirements set forth in the SOW
6 and the deliverables will achieve the Performance Standards.

7 13. The Settling Work Defendants shall, prior to any off-site shipment of Waste
8 Material from the Site to an out-of-state waste management facility, provide written
9 notification to the appropriate state environmental official in the receiving facility's state
10 and to the EPA Project Coordinator of such shipment of Waste Material. However, this
11 notification requirement shall not apply to any off-site shipments when the total volume of
12 all such shipments will not exceed 10 cubic yards.

13 a. The Settling Work Defendants shall include in the written notification
14 the following information, where available: (1) the name and location of the facility to
15 which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material
16 to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the
17 method of transportation. The Settling Work Defendants shall notify the state in which the
18 planned receiving facility is located of major changes in the shipment plan, such as a
19 decision to ship the Waste Material to another facility within the same state, or to a facility
20 in another state.

21 b. The identity of the receiving facility and state will be determined by
22 the Settling Work Defendants following the award of the contract for Remedial Action
23 construction. The Settling Work Defendants shall provide the information required by
24 Paragraph 13a as soon as practicable after the award of the contract and before the Waste
25 Material is actually shipped.

VII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

14. The Settling Work Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with the SOW. Prior to the commencement of any monitoring project under this Consent Decree, the Settling Work Defendants shall submit to the EPA for approval, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by the EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. The Settling Work Defendants shall ensure that the EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by the Settling Work Defendants in implementing this Consent Decree. In addition, the Settling Work Defendants shall ensure that such laboratories shall analyze all samples submitted by the EPA pursuant to the QAPP for quality assurance monitoring. The Settling Work Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. The Settling Work Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. The Settling Work Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree will be conducted in accordance with the procedures set forth in the QAPP approved by the EPA.

15. Upon request, the Settling Work Defendants shall allow split or duplicate samples to be taken by the EPA or their authorized representatives. The Settling Work Defendants shall notify the EPA not less than ten (10) days in advance of any sample collection activity unless shorter notice is agreed to by the EPA. In addition, the EPA shall have the right to take any additional samples that the EPA deems necessary. Upon request, the EPA shall allow the Settling Work Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Work Defendants' implementation of the Work.

16. The Settling Work Defendants shall submit two copies to the EPA and one copy to the State of the results of all sampling and/or tests or other data obtained or generated by or on behalf of the Settling Work Defendants with respect to the implementation of this Consent Decree unless the EPA agrees otherwise.

17. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations and the Settling Defendants retain their respective rights to oppose any such authorities and rights.

VIII. ACCESS

18. Commencing upon the Date of Lodging of this Consent Decree, the Settling Defendants agree to provide the United States and its representatives, including the EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the subject property is controlled by the Settling Defendants, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

- 1 a. Monitoring the Work or any other activities taking place on the
2 property;
3 b. Verifying any data or information submitted to the United States;
4 c. Conducting investigations relating to contamination at or near the
5 Site;
6 d. Obtaining samples;
7 e. Assessing the need for, planning, or implementing additional response
8 actions at or near the Site;
9 f. Inspecting and copying non-legally privileged or joint defense
10 privileged records, operating logs, contracts, or other documents maintained or generated
11 by the Settling Defendants or their agents, consistent with Section XXIV (Access to
12 Information);
13 g. Implementing the Work pursuant to the conditions set forth in
14 Paragraph 75 of this Consent Decree; and
15 h. Assessing the Settling Work Defendants' compliance with this
16 Consent Decree.

17 19. To the extent that the Site or any other property to which access is required
18 for the implementation of this Consent Decree is owned or controlled by persons other than
19 the Settling Defendants, Settling Work Defendants shall use best efforts to obtain access
20 from such persons for the Settling Work Defendants, as well as for the United States on
21 behalf of EPA, and the State, as well as their representatives (including contractors), for
22 the purpose of conducting any activity related to implement the Work pursuant to this
23 Consent Decree. If after using best efforts, the Settling Work Defendants are unable to
24 obtain such access, the Settling Work Defendants shall apply to the United States to obtain
25 such access. Settling Work Defendants shall detail all steps taken to obtain access with any
26 such application. The United States shall, thereafter, take such steps as it deems
27 appropriate to obtain such access. The Settling Work Defendants shall reimburse the
28 United States in accordance with the procedures in Section XVI (Reimbursement of United
States' Response Costs), for all costs incurred, direct or indirect, by the United States in
obtaining such access including, but not limited to, the cost of attorney time. Until such
access is obtained, the Settling Work Defendants shall not be considered in non-compliance
with this Consent Decree and no penalties shall accrue as a result of the Settling Work
Defendants' inability to obtain such access. Neither the Settling Work Defendants nor any
such contractor shall be considered an agent of the United States; provided, however, that
the EPA may authorize the Settling Work Defendants to act as EPA's authorized
representative with respect to the Site.

 a. For purposes of Paragraph 19 of this Consent Decree, "best efforts" may
include the payment of reasonable sums of money in consideration of access.
Notwithstanding the foregoing, the term "best efforts" shall not require the payment of any
sums of money to any of the current or past owners and operators of the Site, including,
but not limited to, Dennis O'Meara, Omega Chemical Corporation, or any company owned
or affiliated, directly or indirectly, by Dennis O'Meara or Omega Chemical Corporation.
If any access required by Paragraph 19 of this Consent Decree is not obtained within 45

1 days of the date of entry of this Consent Decree, Settling Work Defendants shall promptly
2 notify the United States in writing, and shall include in that notification a summary of the
3 steps that Settling Work Defendants have taken to attempt to comply with Paragraph of
4 this Consent Decree. The United States may, as it deems appropriate, assist Settling Work
5 Defendants in obtaining access. Settling Work Defendants shall reimburse the United
6 States in accordance with the procedures in Section XVI (Reimbursement of United States'
7 Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining
8 such access, including but not limited to, the cost of attorney time and the amount of
9 monetary consideration paid or just compensation.

10 b. If EPA determines that land/water use restrictions in the form of state or
11 local laws, regulations, ordinances or other governmental controls are needed to implement
12 the remedy selected in the SOW, ensure the integrity and protectiveness thereof, or ensure
13 non-interference therewith, Settling Work Defendants shall cooperate with EPA's efforts to
14 secure such governmental controls.

15 20. Notwithstanding any provision of this Consent Decree, the United States
16 retains all of its access authorities and rights, as well as all of its rights to require
17 land/water use restrictions, including enforcement authorities related thereto, under
18 CERCLA, RCRA and any other applicable statute or regulations and the Settling Work
19 Defendants retain their respective rights to oppose any such authorities and rights.

20 IX. REPORTING REQUIREMENTS

21 21. In addition to any other requirement of this Consent Decree, the Settling
22 Work Defendants shall submit two copies to the EPA and one copy to the State of written
23 quarterly progress reports that: (a) describe the actions which have been taken toward
24 achieving compliance with this Consent Decree during the previous quarter; (b) include a
25 summary of all validated results of sampling and tests and other relevant data received or
26 generated by the Settling Work Defendants or their contractors or agents in the previous
27 quarter; (c) identify all deliverables, plans and other deliverables required by this Consent
28 Decree completed and submitted during the previous quarter; (d) describe all actions,
including, but not limited to, data collection and implementation of deliverables, which are
scheduled for the next quarter and provide other information relating to the progress of
construction, including, but not limited to, critical path diagrams, Gant charts and Pert
charts; (e) include information regarding percentage of completion, unresolved delays
encountered or anticipated that may affect the future schedule for implementation of the
Work, and a description of efforts made to mitigate those delays or anticipated delays; (f)
include any modifications to the deliverables or other schedules that the Settling Work
Defendants have proposed to the EPA or that have been approved by the EPA; and (g)
describe all activities undertaken in support of the Community Relations Plan during the
previous quarter and those to be undertaken in the next twelve weeks. The Settling Work
Defendants shall submit these progress reports to the EPA and the State by the tenth day of
the first month of the next quarter following the lodging of this Consent Decree until
completion of the Work. Upon request by the EPA, the Settling Work Defendants shall also
provide briefings for the EPA to discuss the progress of the Work.

22 22. The Settling Work Defendants shall notify the EPA and the State of any
23 change in the schedule described in the quarterly progress report for the performance of
24 any activity, including, but not limited to, data collection and implementation of work
25 plans, no later than seven days prior to the performance of the activity.

1 23. Upon the occurrence of any event during performance of the Work that the
2 Settling Work Defendants are required to report pursuant to Section 103 of CERCLA or
3 Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), the
4 Settling Work Defendants shall within 24 hours of the onset of such event orally notify the
5 EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the
6 unavailability of the EPA Project Coordinator), or, in the event that neither the EPA
7 Project Coordinator or the Alternate EPA Project Coordinator is available, the Emergency
8 Response Section, Region 9, United States Environmental Protection Agency. These
9 reporting requirements are in addition to the reporting required by CERCLA Section 103
10 or EPCRA Section 304.

11 24. Within ten (10) days of the onset of such an event, the Settling Work
12 Defendants shall furnish to Plaintiff and the State a written report, signed by the Settling
13 Work Defendants' Project Coordinator, setting forth the events which occurred and the
14 measures taken, and to be taken, in response thereto. Within twenty-one (21) days of the
15 conclusion of such an event, Settling Work Defendants shall submit a report setting forth
16 all actions taken in response thereto.

17 25. The Settling Work Defendants shall submit two copies of all final plans,
18 reports, and data required by the SOW, the EE/CA, or any other approved plans to the
19 EPA and one copy of each to the State in accordance with the schedules set forth in such
20 plans.

21 26. All reports and other documents submitted by the Settling Work Defendants
22 to the EPA and the State (other than the quarterly progress reports referred to above)
23 which document the Settling Work Defendants' compliance with the terms of this Consent
24 Decree shall be signed by an authorized representative of the Settling Work Defendants.

25 X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

26 27. After review of any plan, report or other item which is required to be
27 submitted for approval pursuant to this Consent Decree, the EPA, shall: (a) approve, in
28 whole or in part, the submission; (b) approve the submission upon specified conditions; (c)
modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the
submission, directing that the Settling Work Defendants modify the submission; or (e) any
combination of the above. However, the EPA shall not modify a submission without first
providing the Settling Work Defendants at least one notice of deficiency and an
opportunity to cure within thirty (30) days, except where to do so would cause serious
disruption to the Work or where previous submission(s) have been disapproved due to
material defects and the deficiencies in the submission under consideration indicate a bad
faith lack of effort to submit an acceptable deliverable.

29 28. In the event of approval, approval upon conditions, or modification by the
30 EPA, pursuant to Paragraph 27, the Settling Work Defendants shall proceed to take any
31 action required by the plan, report, or other item, as approved or modified by the EPA
32 subject only to their right to invoke the Dispute Resolution procedures set forth in Section
33 XIX (Dispute Resolution) with respect to the modifications or conditions made by the EPA.
34 In the event that the EPA modifies the submission to cure the deficiencies pursuant to
35 Paragraph 27 and the submission has a material defect, the EPA retains its right to seek
36 stipulated penalties, as provided in Section XX (Stipulated Penalties).

1 29. a. Upon receipt of a notice of disapproval pursuant to Paragraph 27, the
2 Settling Work Defendants shall, within thirty (30) days or such longer time as specified by
3 the EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item
4 for approval. Any stipulated penalties applicable to the submission, as provided in Section
5 XX, shall accrue during the thirty (30) day period or otherwise specified period but shall
6 not be payable unless the resubmission is disapproved or modified due to a material defect
7 as provided in Paragraphs 27 and 28.

8 b. Notwithstanding the receipt of a notice of disapproval pursuant to
9 Paragraph 27, the Settling Work Defendants shall proceed, at the direction of the EPA, to
10 take any action required by any non-deficient portion of the submission. Implementation
11 of any non-deficient portion of a submission shall not relieve the Settling Work Defendants
12 of any liability for stipulated penalties under Section XX (Stipulated Penalties).

13 30. In the event that a resubmitted plan, report or other item, or portion thereof,
14 is disapproved by the EPA, the EPA may again require the Settling Work Defendants to
15 correct the deficiencies, in accordance with the preceding Paragraphs. The EPA also
16 retains the right to modify or develop the plan, report or other item. The Settling Work
17 Defendants shall implement any such plan, report, or item as modified or developed by the
18 EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute
19 Resolution).

20 31. If upon resubmission, a plan, report, or item is disapproved or modified by
21 the EPA due to a material defect, the Settling Work Defendants shall be deemed to have
22 failed to submit such plan, report, or item timely and adequately unless the Settling Work
23 Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute
24 Resolution). The provisions of Section XIX (Dispute Resolution) and Section XX
25 (Stipulated Penalties) shall govern the implementation of the Work and accrual and
26 payment of any stipulated penalties during Dispute Resolution. If the EPA's disapproval
27 or modification is upheld, stipulated penalties shall accrue for such violation from the date
28 on which the initial submission was originally required, as provided in Section X.

 32. All plans, reports, and other items required to be submitted to the EPA
under this Consent Decree shall, upon approval or modification by the EPA, be enforceable
under this Consent Decree. In the event the EPA approves or modifies a portion of a plan,
report, or other item required to be submitted to the EPA under this Consent Decree, the
approved or modified portion shall be enforceable under this Consent Decree.

XI. PROJECT COORDINATORS

33. Within twenty (20) days of lodging of this Consent Decree, the Settling Work Defendants and the EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Work Defendants' Project Coordinator shall be subject to disapproval by the EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Work Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a representative for oversight of performance of daily operations necessary to conduct the Work.

34. Plaintiff may designate other representatives, including, but not limited to, the EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. The EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, the EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines under this Consent Decree that conditions constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

XII. ASSURANCE OF ABILITY TO COMPLETE WORK

35. Within 30 days of entry of this Consent Decree, the Settling Work Defendants shall establish and maintain financial security in the amount of Fifteen Million Dollars (\$15,000,000) in one or more of the following forms;

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Work Defendants;
- e. A demonstration that one or more of the Settling Work Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f);
- f. A letter from a number of the Settling Work Defendants forwarding their annual reports.

1 36. If the Settling Work Defendants seek to demonstrate the ability to complete
2 the Work through a guarantee by a third party pursuant to Paragraph 35(d) of this
3 Consent Decree, the Settling Work Defendants shall demonstrate that the guarantor
4 satisfies the requirements of 40 C.F.R. Part 264.143(f). If the Settling Work Defendants
5 seek to demonstrate their ability to complete the Work by means of the financial test or the
6 corporate guarantee pursuant to Paragraph 35(d) or (e), they shall resubmit sworn
7 statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on
8 the anniversary of the effective date of this Consent Decree. In the event that the EPA
9 determines at any time that the financial assurances provided pursuant to this Section are
10 inadequate, the Settling Work Defendants shall, within 30 days of receipt of notice of the
11 EPA's determination, obtain and present to the EPA for approval one of the other forms of
12 financial assurance listed in Paragraph 35 of this Consent Decree. The Settling Work
13 Defendants' inability to demonstrate financial ability to complete the Work shall not excuse
14 performance of any activities required under this Consent Decree.

15 37. If the Settling Work Defendants can show that the estimated cost to complete
16 the remaining Work has diminished below the amount set forth in Paragraph 35 above
17 after entry of this Consent Decree, the Settling Work Defendants may, on any anniversary
18 date of entry of this Consent Decree, or at any other time agreed to by the Settling Work
19 Defendants and EPA, reduce the amount of the financial security provided under this
20 Section to the estimated cost of the remaining Work to be performed. The Settling Work
21 Defendants shall submit a proposal for such reduction to the EPA, in accordance with the
22 requirements of this Section, and may reduce the amount of the security upon approval by
23 the EPA. In the event of a dispute, the Settling Work Defendants may reduce the amount
24 of the security in accordance with the final administrative or judicial decision resolving the
25 dispute.

26 38. The Settling Work Defendants may change the form of financial assurance
27 provided under this Section at any time, upon notice to and approval by the EPA, provided
28 that the new form of assurance meets the requirements of this Section. In the event of a
dispute, the Settling Work Defendants may change the form of the financial assurance only
in accordance with the final administrative or judicial decision resolving the dispute.

XIII. CERTIFICATION OF COMPLETION

39. Completion of the Work.

a. Within 90 days after the Settling Work Defendants conclude that all
phases of the Work as set forth in this Consent Decree, excluding any required O & M,
have been fully performed and the Performance Standards have been attained, the Settling
Work Defendants shall schedule and conduct an inspection to be attended by the Settling
Work Defendants and the EPA. This request for certification of completion of the Work
shall not relieve Settling Work Defendants of their obligation to perform O&M as required
by this Consent Decree. If, after the inspection, the Settling Work Defendants still believe
that the Work has been fully performed, the Settling Work Defendants shall submit a
written report by a registered professional engineer or geologist stating that the Work has
been completed in full satisfaction of the requirements of this Consent Decree. The report
shall contain the following statement, signed by a responsible corporate official of a Settling
Work Defendant or the Settling Work Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify
that the information contained in or accompanying this submission is true,

1 accurate and complete. I am aware that there are significant penalties for
2 submitting false information, including the possibility of a fine and
imprisonment for knowing violations."

3 If, after review of the written report, the EPA determines that any portion of
4 the Work has not been completed in accordance with this Consent Decree or that the
Performance Standards have not been attained, the EPA will notify the Settling Work
5 Defendants in writing of the activities that must be undertaken by the Settling Work
Defendants pursuant to this Consent Decree to complete the Work and to achieve the
6 Performance Standards. Provided, however, that the EPA may only require the Settling
7 Work Defendants to perform such activities pursuant to this Paragraph to the extent that
such activities are consistent with the scope of the SOW. The EPA will set forth in the
8 notice a schedule for performance of such activities consistent with the Consent Decree, the
EE/CA and the SOW or require the Settling Work Defendants to submit a schedule to the
9 EPA for approval pursuant to Section X (EPA Approval of Plans and Other Submissions).
The Settling Work Defendants shall perform all activities described in the notice in
10 accordance with the specifications and schedules established therein, subject to their right
to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

11 b. If the EPA concludes, based on the initial or any subsequent request
for Certification of Completion by the Settling Work Defendants that the Work has been
12 performed in accordance with this Consent Decree and that the Performance Standards
have been achieved, the EPA will so notify the Settling Work Defendants in writing.

13 XIV. EMERGENCY RESPONSE

14 40. Settling Work Defendants have an obligation to immediately notify the
EPA's Project Coordinator, or, if the Project Coordinator is unavailable, the EPA's
15 Alternate Project Coordinator, if neither of these persons is available, the Settling Work
Defendants shall notify the EPA Emergency Response Unit, Region 9, and the appropriate
16 local, and State authorities of any action or occurrence at the Site of which they become
aware that causes or threatens a release of Waste Material that constitutes an emergency
17 situation or may present an immediate threat to public health or welfare or the
environment. In the event of any action or occurrence during the performance of the Work
18 by Settling Work Defendants which causes or threatens a release of Waste Material from
the Phase 1a Area, Settling Work Defendants shall, subject to Paragraph 41, immediately
19 take all appropriate action to prevent, abate, or minimize such release or threat of release.
The Settling Work Defendants shall take such actions in consultation with the EPA's
20 Project Coordinator or other available authorized EPA officer and in accordance with all
applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other
21 applicable plans or documents developed pursuant to the SOW. In the event that the
Settling Work Defendants fail to take appropriate response action as required by this
22 Section, and the EPA takes such action instead, the Settling Work Defendants shall
reimburse the EPA all costs of the response action not inconsistent with the NCP pursuant
23 to Section XVI (Reimbursement of United States' Response Costs). The responsibility of
the Settling Work Defendants to take action, other than notification, and/or reimburse the
24 EPA for response costs in connection with this Paragraph only applies with respect to an
action or occurrence caused by the Settling Work Defendants, their agents and/or
25 contractors.

26 41. Nothing in the preceding Paragraph or in this Consent Decree shall be
27 deemed to limit any authority of the United States (a) to take all appropriate action to

1 protect human health and the environment or to prevent, abate, respond to, or minimize an
2 actual or threatened release of Waste Material on, at, or from the Site, (b) to direct or
3 order such action, or seek an order from the Court, to protect human health and the
4 environment or to prevent, abate, respond to, or minimize an actual or threatened release
5 of Waste Material on, at, or from the Site, subject to Section XXI (Covenants by Plaintiff),
6 or (c) to seek recovery of response costs for actions taken pursuant to this Paragraph.

7 **XV. OBLIGATIONS OF SETTLING CASH DEFENDANTS**

8 42. a. No later than thirty (30) days following the Date of Entry of this
9 Consent Decree, all funds to be paid by or on behalf of each Settling Cash Defendant shall
10 be deposited into a Qualified Settlement Fund under Treas. Reg. §1.468(b) and Treas. Reg.
11 §301.7701-4(e) or such other funding mechanism established and designated by mutual
12 agreement of the Settling Defendants, in contribution toward the Work, toward payment of
13 Past Response Costs and Oversight Costs, and fulfilling legal obligations related to the
14 Work. Notwithstanding the foregoing sentence, certain Settling Cash Defendants have
15 negotiated an arrangement with the Settling Work Defendants whereby such Settling Cash
16 Defendants listed on Exhibit F hereto, rather than making a lump sum payment will make
17 payments according to the payment schedules set forth on Exhibit F attached hereto. Such
18 Settling Cash Defendants who are making periodic payments shall be subject to the
19 provisions pertaining to the failure to make such payments in the manner and at such times
20 as agreed upon. Each Settling Cash Defendant's obligations under this Consent Decree
21 shall be limited to the payment of its requisite amount as agreed to by the Settling Cash
22 Defendants in that certain settlement agreement entered into with those Settling Work
23 Defendants eligible to sign, and who do sign, such agreement. No Settling Cash Defendant
24 shall be responsible for any payment required of any other party. The name of each
25 Settling Cash Defendant shall be submitted by the Settling Work Defendants to the United
26 States as provided in Section XXVI (Notices and Submissions) upon execution of the
27 Consent Decree. The name of each Settling Cash Defendant will be appended as Appendix
28 C to this Consent Decree at the time of lodging.

b. The failure of any Settling Cash Defendant to satisfy its payment
obligation pursuant to this Paragraph shall not defer the obligations of the Settling Work
Defendants under this Consent Decree.

c. Each Settling Cash Defendant shall enter into, and remain in
compliance with, that certain settlement agreement with those Settling Work Defendants
eligible to sign, and who do sign, such agreement.

d. Each Settling Defendant shall cooperate with the other Settling
Defendants in good faith to effect the obligations and provisions set forth in this Consent
Decree.

23 **XVI. REIMBURSEMENT OF UNITED STATES' RESPONSE COSTS**

24 43. Within thirty (30) days of the entry of this Consent Decree, the Settling Work
25 Defendants shall pay to the EPA Hazardous Substance Superfund the sum of \$282,636 in
26 full reimbursement and settlement by Settling Defendants of Past Response Costs by
27 FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of
28 Justice account in accordance with current electronic funds transfer procedures,
referencing U.S.A.O. file number _____, the EPA Region and Site/Spill ID # 09BC,
and DOJ case number 90-11-3-06529. Payment shall be made in accordance with

1 instructions provided to the Settling Work Defendants by the Financial Litigation Unit of
2 the United States Attorney's Office for the Central District of California following entry of
3 the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M.
4 (Eastern Time) will be credited on the next business day. The Settling Work Defendants
5 shall send notice that such payment has been made to the United States as specified in
6 Section XXVI (Notices and Submissions) and Catherine Shen (PMD-6), U.S.
7 Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco,
8 California, 94105.

9 44. The Settling Work Defendants shall reimburse the United States for all
10 Oversight Costs incurred by the United States in connection with the Work done pursuant
11 to this Consent Decree not inconsistent with the National Contingency Plan. The United
12 States will send the Settling Work Defendants a bill requiring payment that includes a
13 Regionally Prepared Itemized Summary Report which includes direct and indirect costs
14 incurred by the EPA and its contractors, and a DOJ prepared cost summary which reflects
15 costs incurred by DOJ and its contractors, if any on a periodic basis. The Settling Work
16 Defendants shall make all payments of Oversight Costs within thirty (30) days of the
17 Settling Work Defendants' receipt of each bill requiring payment, except as otherwise
18 provided in Paragraph 45. The Settling Work Defendants shall make all payments
19 required by this Paragraph by EFT to the Department of Justice account in accordance
20 with the current electronic funds transfer procedures or in the form of a certified or
21 cashier's check or checks made payable to the "EPA Hazardous Substance Superfund"
22 and referencing the EPA Region and Site/Spill ID # 09BC, the DOJ case number 90-11-3-
23 06529, and the name and address of the party making payment. The Settling Work
24 Defendants shall send the check(s) to U.S. EPA, Region IX, Superfund Accounting, P.O.
25 Box 360863M, Pittsburgh, PA, 15251, and shall send copies of the check(s) to the United
26 States as specified in Section XXVI (Notices and Submissions) and Catherine Shen (PMD-
27 6), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco,
28 California, 94105.

29 45. The Settling Work Defendants may contest payment of any Oversight Costs
30 under Paragraph 44 if they determine that the United States has made an accounting error,
31 if they allege that a cost item that is included represents costs that are inconsistent with the
32 NCP or that such costs are not Oversight Costs, as that term is defined by this Consent
33 Decree. Such objection shall be made in writing within thirty (30) days of receipt of the bill
34 and must be sent to the United States pursuant to Section XXVI (Notices and Submissions).
35 Any such objection shall specifically identify the contested Oversight Costs and the basis
36 for objection. In the event of an objection, the Settling Work Defendants shall, within the
37 thirty-day period, pay all uncontested Oversight Costs to the United States by EFT or in
38 the form of a certified or cashier's check or checks in the manner described in Paragraph
39 44. Simultaneously, the Settling Work Defendants shall establish an interest-bearing
40 escrow account in a federally-insured bank duly chartered in the State of California and
41 remit to that escrow account funds equivalent to the amount of the contested Oversight
42 Costs. The Settling Work Defendants shall send to the United States, as provided in
43 Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying
44 the uncontested Oversight Costs, and a copy of the correspondence that establishes and
45 funds the escrow account, including, but not limited to, information containing the identity
46 of the bank and bank account under which the escrow account is established as well as a
47 bank statement showing the initial balance of the escrow account. Simultaneously with
48 establishment of the escrow account, the Settling Work Defendants shall initiate the
49 Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States
50 prevails in the dispute, within five days of the resolution of the dispute, the Settling Work

1 Defendants shall pay the sums due (with accrued interest) to the United States in the
2 manner described in Paragraph 44. If the Settling Work Defendants prevail concerning
3 any aspect of the contested costs, the Settling Work Defendants shall pay that portion of the
4 costs (plus associated accrued interest) for which they did not prevail to the United States
5 in the manner described in Paragraph 44; the Settling Work Defendants shall be disbursed
6 any balance of the escrow account. The dispute resolution procedures set forth in this
7 Paragraph in conjunction with the procedures set forth in Section XIX (Dispute
8 Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling
9 Work Defendants' obligation to reimburse the United States for its Oversight Costs.

10 46. In the event that the payments required by Paragraph 43 are not made
11 within thirty (30) days of the effective date of this Consent Decree or the payments required
12 by Paragraph 44 are not made within thirty (30) days of the Settling Work Defendants'
13 receipt of the bill, the Settling Work Defendants shall pay Interest on the unpaid balance.
14 The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue
15 thirty (30) days after the effective date of this Consent Decree. The Interest on Oversight
16 Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the
17 date of the Settling Work Defendants' payment. Payments of Interest made under this
18 Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by
19 virtue of the Settling Work Defendants' failure to make timely payments under this
20 Section. The Settling Work Defendants shall make all payments required by this
21 Paragraph in the manner described in Paragraph 44.

22 a. As soon as reasonably practicable after the effective date of this
23 Consent Decree the United States, on behalf of the Settling Federal Agency listed on
24 Exhibit C, shall pay to the Settling Work Defendants \$362,330 for its share of the Work
25 and other obligations under this Consent Decree and its share of Past Response Costs and
26 Oversight Costs, in the form of a check or checks made payable to the Omega Cash-Out
27 Settlement Fund and sent to Boone & Associates, 5225 Canyon Crest Drive, Building 200,
28 Suite 253, Riverside California 92507, or by Electronic Funds Transfer in accordance with
instructions provided by the Settling Work Defendants.

17 b. In the event that payments required by Paragraph 46(a) are not made
18 within 30 days of the effective date of this Consent Decree, Interest on the unpaid balance
19 shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C.
9607(a), commencing on the effective date of this Consent Decree and accruing through the
date of the payment.

20 c. The Parties to this Consent Decree recognize and acknowledge that
21 the payment obligations of the Settling Federal Agency under this Consent Decree can only
22 be paid from appropriated funds legally available for such purpose. Nothing in this
23 Consent Decree shall be interpreted or construed as a commitment or requirement that any
24 Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act,
31 U.S.C. 1341, or any other applicable provision of law.

XVII. INDEMNIFICATION AND INSURANCE

1
2 47. a. The United States does not assume any liability by entering into this
3 agreement or by virtue of any designation of the Settling Work Defendants as the EPA's
4 authorized representatives under Section 104(e) of CERCLA. The Settling Work
5 Defendants shall indemnify, save and hold harmless the United States (with the exception
6 of the Settling Federal Agency) and its officials, agents, employees, contractors,
7 subcontractors, or representatives for or from any and all claims or causes of action arising
8 from, or on account of, negligent or other wrongful acts or omissions of the Settling Work
9 Defendants, their officers, directors, employees, agents, contractors, subcontractors, and
10 any persons acting on their behalf or under their control, in carrying out activities
11 pursuant to this Consent Decree, including, but not limited to, any claims arising from any
12 designation of the Settling Work Defendants as the EPA's authorized representatives
13 under Section 104(e) of CERCLA. Further, the Settling Work Defendants agree to pay the
14 United States (with the exception of the Settling Federal Agency) all costs it incurs
15 including, but not limited to, attorneys fees and other expenses of litigation and settlement
16 arising from, or on account of, claims made against the United States based on negligent or
17 other wrongful acts or omissions of the Settling Work Defendants, their officers, directors,
18 employees, agents, contractors, subcontractors, and any persons acting on their behalf or
19 under their control, in carrying out activities pursuant to this Consent Decree. The United
20 States shall not be held out as a party to any contract entered into by or on behalf of the
21 Settling Work Defendants in carrying out activities pursuant to this Consent Decree.

22 b. The United States shall give the Settling Work Defendants notice of
23 any claim for which the United States plans to seek indemnification pursuant to Paragraph
24 47, and shall consult with the Settling Work Defendants prior to settling such claim.

25 48. The Settling Defendants waive all claims against the United States for
26 damages or reimbursement or for set-off of any payments made or to be made to the
27 United States, arising from or on account of any contract, agreement, or arrangement
28 between any one or more of the Settling Work Defendants and any person for performance
of Work described in the SOW, including, but not limited to, claims on account of
construction delays. In addition, the Settling Work Defendants shall indemnify and hold
harmless the United States with respect to any and all claims for damages or
reimbursement arising from or on account of any contract, agreement, or arrangement
between any one or more of the Settling Work Defendants and any person for performance
of Work on or relating to the Phase 1a Area, including, but not limited to, claims on
account of construction delays.

49. No later than fifteen (15) days before commencing any on-site Work, the
Settling Work Defendants shall secure, and shall maintain until the first anniversary of the
EPA's Certification of Completion of the Work pursuant to Paragraph 39 of Section XIII
(Certification of Completion) comprehensive general liability insurance with limits of five
million dollars, combined single limit, and automobile liability insurance with limits of five
million dollars, combined single limit, naming the United States as an additional insured.
In the alternative, other financial mechanisms or self-insurance may be utilized in lieu of
comprehensive general liability insurance and automobile liability insurance, subject to
approval by the United States. In addition, for the duration of this Consent Decree, the
Settling Work Defendants shall satisfy, or shall ensure that their contractors or
subcontractors satisfy, all applicable laws and regulations regarding the provision of
worker's compensation insurance for all persons performing the Work on behalf of the
Settling Work Defendants in furtherance of this Consent Decree. Prior to commencement

1 of the Work under this Consent Decree, the Settling Work Defendants shall provide to the
2 EPA certificates of such insurance and a copy of each insurance policy. The Settling Work
3 Defendants shall resubmit such certificates and copies of policies each year on the
4 anniversary of the effective date of this Consent Decree. If the Settling Work Defendants
5 demonstrate by evidence satisfactory to the EPA that any contractor or subcontractor
6 maintains insurance equivalent to that described above, or insurance covering the same
7 risks but in a lesser amount, then, with respect to that contractor or subcontractor, the
8 Settling Work Defendants need provide only that portion of the insurance described above
9 which is not maintained by the contractor or subcontractor.

10 XVIII. FORCE MAJEURE

11 50. "Force majeure," for purposes of this Consent Decree, is defined as any event
12 arising from causes beyond the control of the Settling Work Defendants, of any entity
13 controlled by the Settling Work Defendants, or of the Settling Work Defendants'
14 contractors, that delays or prevents the performance of any obligation under this Consent
15 Decree despite the Settling Work Defendants' best efforts to fulfill the obligation. The
16 requirement that the Settling Work Defendants exercise "best efforts to fulfill the
17 obligation" includes using best efforts to anticipate any potential force majeure event and
18 best efforts to address the effects of any potential force majeure event (1) as it is occurring
19 and (2) following the potential force majeure event, such that the delay is minimized to the
20 greatest extent possible. "Force Majeure" does not include financial inability to complete
21 the Work.

22 51. If any event occurs or has occurred that may delay the performance of any
23 obligation under this Consent Decree, whether or not caused by a force majeure event, the
24 Settling Work Defendants shall notify orally the EPA's Project Coordinator or, in his or
25 her absence, the EPA's Alternate Project Coordinator or, in the event both of the EPA's
26 designated representatives are unavailable, the Director of the Hazardous Waste
27 Management Division, the EPA Region 9, within ten (10) days of when the Settling Work
28 Defendants first knew that the event might cause a delay. Within ten (10) days thereafter,
the Settling Work Defendants shall provide in writing to the EPA an explanation and
description of the reasons for the delay; the anticipated duration of the delay; all actions
taken or to be taken to prevent or minimize the delay; a schedule for implementation of
any measures to be taken to prevent or mitigate the delay or the effect of the delay; the
Settling Work Defendants' rationale for attributing such delay to a force majeure event if
they intend to assert such a claim; and a statement as to whether, in the opinion of the
Settling Work Defendants, such event may cause or contribute to an endangerment to
public health, welfare or the environment. The Settling Work Defendants shall include
with any notice all available documentation supporting their claim that the delay was
attributable to a force majeure event. Failure to comply with the above requirements shall
preclude the Settling Work Defendants from asserting any claim of force majeure for that
event for the period of time of such failure to comply, and for any additional delay caused
by such failure. The Settling Work Defendants shall be deemed to know of any
circumstance of which the Settling Work Defendants, any entity controlled by the Settling
Work Defendants, or the Settling Work Defendants' contractors knew or should have
known.

52. If the EPA agrees that the delay or anticipated delay is attributable to a force
majeure event, the time for performance of the obligations under this Consent Decree that
are affected by the force majeure event will be extended by the EPA for such time as is
necessary to complete those obligations. An extension of the time for performance of the

1 obligations affected by the force majeure event shall not, of itself, extend the time for
2 performance of any other obligation. If the EPA does not agree that the delay or
3 anticipated delay has been or will be caused by a force majeure event, the EPA will notify
4 the Settling Work Defendants in writing of its decision. If the EPA agrees that the delay is
5 attributable to a force majeure event, the EPA will notify the Settling Work Defendants in
6 writing of the length of the extension, if any, for performance of the obligations affected by
7 the force majeure event.

8 53. If the Settling Work Defendants elect to invoke the dispute resolution
9 procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than
10 fifteen (15) days after receipt of the EPA's notice. In any such proceeding, the Settling
11 Work Defendants shall have the burden of demonstrating by a preponderance of the
12 evidence that the delay or anticipated delay has been or will be caused by a force majeure
13 event, that the duration of the delay or the extension sought was or will be warranted
14 under the circumstances, that reasonable efforts were exercised to avoid and mitigate the
15 effects of the delay, and that Settling Work Defendants complied with the requirements of
16 Paragraphs 50 and 51, above. If the Settling Work Defendants carry this burden, the delay
17 at issue shall be deemed not to be a violation by the Settling Work Defendants of the
18 affected obligation of this Consent Decree identified to the EPA and the Court.

19 XIX. DISPUTE RESOLUTION

20 54. Unless otherwise expressly provided for in this Consent Decree, the dispute
21 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes
22 arising under or with respect to this Consent Decree. However, the procedures set forth in
23 this Section shall not apply to actions by the United States to enforce obligations of the
24 Settling Defendants that have not been disputed in accordance with this Section.

25 55. Any dispute which arises under or with respect to this Consent Decree shall
26 in the first instance be the subject of informal negotiations between the parties to the
27 dispute. The period for informal negotiations shall not exceed twenty (20) days from the
28 time the dispute arises, unless it is modified by written agreement of the parties to the
dispute. The dispute shall be considered to have arisen when one party sends the other
parties a written Notice of Dispute.

56. a. In the event that the Parties cannot resolve a dispute by informal
negotiations under the preceding Paragraph, then the position advanced by the EPA shall
be considered binding unless, within seven (7) days after the conclusion of the informal
negotiation period, the Settling Work Defendants invoke the formal dispute resolution
procedures of this Section by serving on the United States a written Statement of Position
on the matter in dispute, including, but not limited to, any factual data, analysis or opinion
supporting that position and any supporting documentation relied upon by the Settling
Work Defendants. The Statement of Position shall specify the Settling Work Defendants'
position as to whether formal dispute resolution should proceed under Paragraph 57 or
Paragraph 58.

b. Within fourteen (14) days after receipt of the Settling Work
Defendants' Statement of Position, the EPA will serve on the Settling Work Defendants its
Statement of Position, including, but not limited to, any factual data, analysis, or opinion
supporting that position and all supporting documentation relied upon by the EPA. The
EPA's Statement of Position shall include a statement as to whether formal dispute

1 resolution should proceed under Paragraph 57 or 58. Within 5 days after receipt of the
2 EPA's Statement of Position, the Settling Work Defendants may submit a Reply.

3 c. If there is disagreement between the EPA and the Settling Work
4 Defendants as to whether dispute resolution should proceed under Paragraph 57 or 58 the
5 parties to the dispute shall follow the procedures set forth in the paragraph determined by
6 the EPA to be applicable. However, if the Settling Work Defendants ultimately appeal to
7 the Court to resolve the dispute, the Court shall determine which Paragraph is applicable
8 in accordance with the standards of applicability set forth in Paragraphs 57 and 58.

9 57. Formal dispute resolution for disputes pertaining to the selection or
10 adequacy of any response action under this Consent Decree and all other disputes that are
11 accorded review on the administrative record under applicable principles of administrative
12 law shall be conducted pursuant to the procedures set forth in this Paragraph. For
13 purposes of this Paragraph, the adequacy of any response action includes, without
14 limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or
15 any other items requiring approval by the EPA under this Consent Decree; and (2) the
16 adequacy of the performance of response actions taken pursuant to this Consent Decree.
17 Nothing in this Consent Decree shall be construed to allow any dispute by the Settling
18 Work Defendants regarding the validity of the SOW's provisions or the provisions of
19 EPA's Action Memorandum, provided however that consistent with Paragraph 11 of this
20 Consent Decree, the Settling Work Defendants may dispute the selection or adequacy of
21 any response action selected by EPA which the Settling Work Defendants maintain
22 enlarges the SOW or alters the Performance Standards agreed to under this Consent
23 Decree.

24 a. An administrative record of the dispute shall be maintained by the
25 EPA and shall contain all statements of position, including supporting documentation,
26 submitted pursuant to this Section. Where appropriate, the EPA may allow submission of
27 supplemental Statements of Position by the parties to the dispute.

28 b. The Director of the Superfund Division, the EPA Region 9, will issue a
final administrative decision resolving the dispute based on the administrative record
described in Paragraph 57.a. This decision shall be binding upon the Settling Work
Defendants, subject only to the right to seek judicial review pursuant to Paragraph 57.c.

c. Any administrative decision made by the EPA pursuant to Paragraph
57.b shall be reviewable by this Court, provided that a motion for judicial review of the
decision is filed by the Settling Work Defendants with the Court and served on all Parties
within ten (10) days of receipt of the EPA's decision. The motion shall include a
description of the matter in dispute, the efforts made by the parties to resolve it, the relief
requested, and the schedule, if any, within which the dispute must be resolved to ensure
orderly implementation of this Consent Decree. The United States may file a response to
the Settling Work Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, the
Settling Work Defendants shall have the burden of demonstrating that the decision of the
Superfund Director is arbitrary and capricious or otherwise not in accordance with law.
Judicial review of the EPA's decision shall be on the administrative record compiled
pursuant to Paragraph 57.a.

1 58. Formal dispute resolution for disputes that neither pertain to the selection or
2 adequacy of any response action nor are otherwise accorded review on the administrative
3 record under applicable principles of administrative law, shall be governed by this
Paragraph.

4 a. Following receipt of the Settling Work Defendants' Statement of
5 Position submitted pursuant to Paragraph 56, the Director of the Superfund Division, the
6 EPA Region 9, will issue a final decision resolving the dispute. The Superfund Division
7 Director's decision shall be binding on the Settling Work Defendants unless, within twenty-
8 one (21) days of receipt of the decision, the Settling Work Defendants file with the Court
and serve on the parties a motion for judicial review of the decision setting forth the matter
in dispute, the efforts made by the parties to resolve it, the relief requested, and the
schedule, if any, within which the dispute must be resolved to ensure orderly
implementation of the Consent Decree. The United States may file a response to the
Settling Work Defendants' motion within 30 days of the motion.

9 b. Notwithstanding Section I (Background) of this Consent Decree,
10 judicial review of any dispute governed by this Paragraph shall be governed by applicable
principles of law.

11 59. The invocation of formal dispute resolution procedures under this Section
12 shall not extend, postpone or affect in any way any obligation of the Settling Work
13 Defendants under this Consent Decree, not directly in dispute, unless the EPA or the Court
14 agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to
15 accrue but payment shall be stayed pending resolution of the dispute as provided in
Paragraph 68. Notwithstanding the stay of payment, stipulated penalties shall accrue from
the first day of noncompliance with any applicable provision of this Consent Decree. In the
event that the Settling Work Defendants do not prevail on the disputed issue, stipulated
penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

16 XX.STIPULATED PENALTIES

17 60. The Settling Work Defendants shall be liable for stipulated penalties in the
18 amounts set forth in Paragraphs 61 and 62 to the United States for failure to comply with
19 the requirements of this Consent Decree specified below, unless excused under Section
20 XVIII (Force Majeure). The Settling Cash Defendants shall be liable for stipulated
21 penalties in the amounts set forth in Paragraph 62.b for late or inadequate payment as set
22 forth in Paragraph 62.b. "Compliance" by the Settling Work Defendants shall include
23 completion of the activities under this Consent Decree or any work plan or other plan
24 approved under this Consent Decree identified below in accordance with all applicable
25 requirements of law, this Consent Decree, the SOW, the EE/CA, EPA's Action
26 Memorandum, and any plans or other documents approved by the EPA pursuant to this
27 Consent Decree and within the specified time schedules established by and approved under
28 this Consent Decree.

1 **61. a. The following stipulated penalties shall accrue per violation per day**
2 **for any noncompliance identified in Subparagraph b:**

Penalty Per Violation	Period of Noncompliance
Per Day	
\$ 2,000	1 - 15
\$ 5,000	16 - 30
\$ 10,000	Day 31 and Beyond

6 **b. The above stipulated penalties apply to the following:**

- 7 **A) Failure to submit the following deliverables in a timely and**
8 **adequate fashion:**
- 9 i) the 30% Design report for the Groundwater NTCRA;
- 10 ii) the RI Report (for soils);
- 11 iii) the Risk Assessment Report (for soils); and
- 12 iv) the FS Report (for soils).
- 13 **B) Failure to Comply with the following Work Schedule**
14 **Milestones for the Groundwater NTCRA:**
- 15 i) Failure to maintain the Field Contractor Start Day (continuous
- 16 in-field presence);
- 17 ii) Failure to start up the Groundwater containment system as
- 18 scheduled; and
- 19 **C) Failure to comply with the schedule for installation of the**
20 **downgradient sentinel wells; and**
- 21 **D) Failure to use best efforts to obtain or provide access as**
22 **required by this Consent Decree.**

23 **62. a. The following stipulated penalties shall accrue per violation per day**
24 **for failure to submit timely or adequate reports or other written documents required to be**
25 **submitted pursuant to all approved work plans prepared pursuant to this Consent Decree,**
26 **except as specified in paragraph 61 above:**

Penalty Per Violation	Period of Noncompliance
Per Day	
\$ 1,000	1 - 15
\$ 2,500	16 - 30
\$ 5,000	Day 31 and Beyond

27 **b. Each settling Cash Defendant shall be liable for stipulated penalties**
28 **for: (1) late or inadequate payment pursuant to Paragraph 42.a (Obligations of Settling**
Cash Defendants) of this Consent Decree; or (2) a violation of Section XXV (Retention of

1 Records). The stipulated penalty for any late payment or payment of less than the full
2 amount due as set forth in Paragraph 42.a for each Settling Cash Defendant making such
3 late payment or inadequate payment shall be \$5,000 per day. Upon written demand by the
4 EPA, payment shall be made in accordance with Paragraph 66 of this Section. This
5 paragraph shall not apply to the Settling Federal Agency.

6
7 63. In the event that the EPA assumes performance of substantially all of the
8 Work pursuant to Paragraph 75 of Section XXI (Covenants by Plaintiff), the Settling Work
9 Defendants shall be liable for a stipulated penalty in the amount of five hundred thousand
10 dollars (\$500,000).

11 64. All penalties shall begin to accrue on the day after the complete performance
12 is due or the day a violation occurs, and shall continue to accrue through the final day of
13 the correction of the noncompliance or completion of the activity. However, stipulated
14 penalties shall not accrue: (1) with respect to a deficient submission under Section X (EPA
15 Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st
16 day after the EPA's receipt of such submission until the date that the EPA notifies the
17 Settling Work Defendants of any deficiency; (2) with respect to a decision by the Director
18 of the Superfund Division, the EPA Region 9, under Paragraphs 57 or 58 of Section XIX
19 (Dispute Resolution), during the period, if any, beginning on the 21st day after the date
20 that the Settling Work Defendants' reply to the EPA's Statement of Position is received
21 until the date that the Director issues a final decision regarding such dispute; or (3) with
22 respect to judicial review by this Court of any dispute under Section XIX (Dispute
23 Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of
24 the final submission regarding the dispute until the date that the Court issues a final
25 decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of
26 separate penalties for separate violations of this Consent Decree.

27 65. Following the EPA's determination that the Settling Work Defendants have
28 failed to comply with a requirement of this Consent Decree, the EPA may give the Settling
Work Defendants written notification of the same and describe the noncompliance. The
EPA may send the Settling Work Defendants a written demand for the payment of the
penalties. However, penalties shall accrue as provided in the preceding paragraph
regardless of whether EPA has notified the Settling Work Defendants of a violation.

66. All penalties accruing under this Section shall be due and payable to the
United States within thirty (30) days of the Settling Defendants' receipt from the EPA of a
demand for payment of the penalties, unless the Settling Defendants invoke the Dispute
Resolution procedures under Section XIX (Dispute Resolution). All payments to the
United States under this Section shall be paid by EFT or certified or cashier's check(s)
made payable to the "EPA Hazardous Substances Superfund," shall be mailed to: U.S.
EPA, Region IX, Attention: Superfund Accounting, P.O. Box 3608663M, Pittsburgh, PA,
15251, shall indicate that the payment is for stipulated penalties, and shall reference the
EPA Region 9 and Site/Spill ID # 09BC, the DOJ Case Number 93-11-3-06529, and the
name and address of the party making payment. Copies of check(s) tendered pursuant to
this Section, and any accompanying transmittal letter(s), shall be sent to the United States
as provided in Section XXVI (Notices and Submissions), and to Catherine Shen (PMD-6),
U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco,
California, 94105.

1 67. The payment of penalties shall not alter in any way the Settling Work
2 Defendants' obligation to complete the performance of the Work required under this
Consent Decree.

3 68. Penalties shall continue to accrue as provided in Paragraph 61 during any
4 dispute resolution period, but need not be paid until the following:

5 a. If the dispute is resolved by agreement or by a decision of the EPA
6 that is not appealed to this Court, accrued penalties determined to be owing shall be paid to
the EPA within fifteen (15) days of the agreement or the receipt of the EPA's decision or
order;

7 b. If the dispute is appealed to this Court and the United States prevails
8 in whole or in part, the Settling Work Defendants shall pay all accrued penalties
determined by the Court to be owed to the EPA within thirty (30) days of receipt of the
Court's decision or order, except as provided in Subparagraph c below;

9 c. If the District Court's decision is appealed by any Party, the Settling
10 Work Defendants shall pay all accrued penalties determined by the District Court to be
owing to the United States into an interest-bearing escrow account within fifteen (15) days
11 of receipt of the Court's decision or order. Penalties shall be paid into this account as they
continue to accrue, at least every thirty (30) days. Within fifteen (15) days of receipt of the
12 final appellate court decision, the escrow agent shall pay the balance of the account to the
EPA or to the Settling Work Defendants to the extent that they prevail.

13 69. a. If the Settling Work Defendants fail to pay stipulated penalties when
14 due, the United States may institute proceedings to collect the penalties, as well as Interest.
The Settling Work Defendants shall pay Interest on the unpaid balance, which shall begin
15 to accrue on the date of demand made pursuant to Paragraph 65.

16 b. Nothing in this Consent Decree shall be construed as prohibiting,
17 altering, or in any way limiting the ability of the United States to seek any other remedies
or sanctions available by virtue of the Settling Work Defendants' violation of this Consent
Decree or of the statutes and regulations upon which it is based, including, but not limited
18 to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. §9622(1). Provided,
however, that the United States shall not seek civil penalties pursuant to Section 122(l) of
19 CERCLA for any violation for which a stipulated penalty is provided herein, except in the
case of a willful violation of the Consent Decree.

20 70. Notwithstanding any other provision of this Section, the United States may,
21 in its unreviewable discretion, waive any portion of stipulated penalties that have accrued
pursuant to this Consent Decree.
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XXI. COVENANTS BY PLAINTIFF

70.1 In consideration of the payments that will be made by the Settling Federal Agency under the terms of the Consent Decree, and except as specifically provided in Paragraph 74 of this Section, EPA covenants not to take administrative action against the Settling Federal Agency pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of Past Response Costs and Oversight Costs. EPA's covenant shall take effect upon the receipt of the payments required by Paragraph 46.a of Section XVI (Reimbursement of United States' Response Costs). EPA's covenant is conditioned upon the satisfactory performance by Settling Federal Agency of its obligations under this Consent Decree. EPA's covenant extends only to the Settling Federal Agency and does not extend to any other person.

71. In consideration of the actions that will be performed and the payments that will be made by the Settling Work Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraph 73 of this Section, the United States covenants not to sue or to take administrative action against the Settling Work Defendants pursuant to Section 7003 of RCRA or Sections 106 and 107(a) of CERCLA for performance of the Work, for recovery of Past Response Costs, for recovery of Oversight Costs, or for any other matter covered by this Consent Decree, except as expressly reserved in Paragraph 73. The covenant not to sue with respect to the performance of Work shall take effect upon the Certification of Completion of the Work by EPA pursuant to Paragraph 39 of Section XIII (Certification of Completion); the covenant not to sue with respect to the Past Response Costs shall take effect upon payment of such costs by the Settling Work Defendants pursuant to Paragraph 43 (Reimbursement of United States' Response Costs). The covenant not to sue with respect to the performance of Work is conditioned upon satisfactory performance by the Settling Work Defendants of their obligations under this Consent Decree, including all O&M required under the Operation and Maintenance Plan approved or developed by the EPA pursuant to this Consent Decree and the SOW. The United States may certify the completion of a portion of the Work and the covenant not to sue by the United States shall become effective with respect to such completed Work upon such certification. The United States further covenants that upon EPA's certification of the completion of the O&M required under the Operation and Maintenance Plan or upon the transfer, as approved by the United States, of the above obligations (which may include future O&M obligations which are not foreseen as of the date of this Consent Decree) pursuant to another established plan or another legally enforceable document, the Settling Work Defendants' obligations pursuant to this Consent Decree shall cease and this Consent Decree shall terminate. These covenants not to sue extend only to the Settling Work Defendants and do not extend to any other person or entity.

72. In consideration of the payments made and costs incurred to date, including payments made or to be made pursuant to this Consent Decree by or on behalf of each Settling Cash Defendant, except as specifically provided in Paragraph 74 of this Section, the United States covenants not to sue or to take administrative action pursuant to Section 7003 of RCRA or Sections 106 and 107(a) of CERCLA, 42 U.S.C. § 9606 and 9607(a), against the Settling Cash Defendants for performance of the Work, for recovery of Past Response Costs, for recovery of Oversight Costs, or for any other matter covered by this Consent Decree, except as expressly reserved in Paragraph 74. These covenants not to sue or take administrative action shall take effect for each Settling Cash Defendant upon payment of the amount owed as set forth in Paragraph 42.a of this Consent Decree. These covenants are conditioned upon the satisfaction by each individual Settling Cash Defendant of its respective payment obligation in Paragraph 42.a of this Consent Decree. These

1 covenants extend only to the person or entities identified in this subparagraph and do not
2 extend to any other person. The payment by each individual Settling Cash Defendant of its
3 requisite amount in accordance with Paragraph 42.a, along with amounts previously paid
or costs incurred under the UAO, shall constitute full performance of its individual
obligations under this Consent Decree and thereby entitle it to these covenants.

4 73. General Reservations of Rights as to the Settling Work Defendants. The
5 covenants set forth above do not pertain to any matters other than those expressly specified
6 in Paragraph 71. The United States reserves, and this Consent Decree is without prejudice
to, all rights against the Settling Work Defendants with respect to all other matters,
including but not limited to, the following:

7 (1) claims based on a failure by the Settling Work Defendants to meet a
8 requirement of this Consent Decree;

9 (2) liability arising from the past, present, or future disposal, release, or
threat of release of Waste Materials outside of the Phase 1a Area;

10 (3) liability of the Settling Work Defendants for their future disposal of
11 Waste Material at the Phase 1a Area, other than as provided in the Work, or otherwise
ordered by the EPA;

12 (4) liability for damages for injury to, destruction of, or loss of natural
13 resources, and the costs of any natural resource damage assessments;

14 (5) criminal liability;

15 (6) liability for violations of federal or state law which occur during or
after implementation of the Work; and

16 (7) liability for response actions and response costs not set forth in this
17 Consent Decree and any work plans or submittals approved pursuant hereto.

18 74. General reservations of rights as to the Settling Cash Defendants. The
19 covenants set forth above do not pertain to any matters other than those expressly specified
20 in Paragraph 72. The United States reserves, and this Consent Decree is without prejudice
to, all rights against the Settling Cash Defendants and the Settling Federal Agency, with
respect to all other matters, including but not limited to, the following:

21 (1) claims based on a failure by the Settling Cash Defendants or the
Settling Federal Agency, to meet any applicable requirement of this Consent Decree;

22 (2) liability arising from the past, present, or future disposal, release, or
23 threat of release of Waste Materials outside of the Phase 1a Area;

24 (3) liability of the Settling Cash Defendants or the Settling Federal
Agency for its future disposal of Waste Material at the Phase 1a Area, other than as
25 provided in the Work, or otherwise ordered by the EPA;

26 (4) liability for damages for injury to, destruction of, or loss of natural
resources, and the costs of any natural resource damage assessments;

1 (5) criminal liability; and

2 (6) liability for response actions and response costs not set forth in this
3 Consent Decree and any work plans or submittals approved pursuant hereto.

4 75. Work Takeover. In the event the EPA determines that the Settling Work
5 Defendants have ceased implementation of any portion of the Work, are seriously or
6 repeatedly deficient or late in their performance of the Work, or are implementing the
7 Work in a manner which may cause an endangerment to human health or the
8 environment, the EPA may assume the performance of all or any portions of the Work as
9 the EPA determines necessary. The Settling Work Defendants may invoke the procedures
10 set forth in Section XIX (Dispute Resolution), to dispute the EPA's determination that
11 takeover of the Work is warranted under this Paragraph. Costs incurred by the United
12 States in performing the Work pursuant to this Paragraph shall be considered Oversight
13 Costs that the Settling Work Defendants shall pay pursuant to Section XVI
14 (Reimbursement of United States' Response Costs).

15 76. Notwithstanding any other provision of this Consent Decree, the United
16 States retains all authority and reserves all rights to take any and all response actions
17 authorized by law.

18 **XXII. COVENANTS BY SETTLING DEFENDANTS**
19 **AND SETTLING FEDERAL AGENCY**

20 77. Covenant Not to Sue. Subject to the reservations in Paragraph 78, the
21 Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes
22 of action against the United States with respect to the Work, past response actions, and
23 Past Response Costs as set forth in this Consent Decree, including, but not limited to:

24 a. any direct or indirect claim for reimbursement from the Hazardous
25 Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C.
26 Section 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. Sections
27 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law;

28 b. any claims against the United States, including any department,
agency or instrumentality of the United States under CERCLA Sections 107 or 113 related
to the Omega Property; or

c. any claims arising out of the Work in the Phase 1a Area, including
claims based on the EPA's selection of response actions, oversight of response activities or
approval of plans for such activities.

77.1 Covenant by Settling Federal Agency. Settling Federal Agency hereby agrees
not to assert any direct or indirect claim for reimbursement from the Hazardous Substance
Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. 9507) through
CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to
the Work, past response actions and Past Response Costs and Oversight Costs as defined
herein, or this Consent Decree. This covenant does not preclude demand for reimbursement
from the Superfund of costs incurred by a Settling Federal Agency in the performance of its
duties (other than pursuant to this Consent Decree) as lead or support agency under the
National Contingency Plan (40 C.F.R. Part 300).

1 78. The Settling Defendants reserve, and this Consent Decree is without
2 prejudice to, claims against the United States, subject to the provisions of Chapter 171 of
3 Title 28 of the United States Code, for money damages for injury or loss of property or
4 personal injury or death caused by the negligent or wrongful act or omission of any
5 employee of the United States while acting within the scope of his office or employment
6 under circumstances where the United States, if a private person, would be liable to the
7 claimant in accordance with the law of the place where the act or omission occurred.
8 However, any such claim shall not include a claim for any damages caused, in whole or in
9 part, by the act or omission of any person, including any contractor, who is not a federal
10 employee as that term is defined in 28 U.S.C. Section 2671; nor shall any such claim include
11 a claim based on the EPA's selection of response actions, or the oversight or approval of the
12 Settling Work Defendants' plans or activities. The foregoing applies only to claims which
13 are brought pursuant to any statute other than CERCLA and for which the waiver of
14 sovereign immunity is found in a statute other than CERCLA; and (b) contribution claims
15 against the Settling Federal Agency in the event any claim is asserted by the United States
16 against the Settling Defendants under the authority of or under Paragraphs 73(2)-(4) and
17 (7) or Paragraphs 74 (2) - (4) and (6) of Section XXI (Covenants by Plaintiff), but only to
18 the same extent and for the same matters, transactions, or occurrences as are raised in the
19 claim of the United States against Settling Defendants.

20 79. Nothing in this Consent Decree shall be deemed to constitute
21 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C.
22 Section 9611, or 40 C.F.R. Section 300.700(d).

23 79.1 Settling Defendants reserve, and this Consent Decree is without prejudice to,
24 claims under or relating to contracts between the Settling Defendants and the United
25 States, including any department, agency, or instrumentality of the United States.

26 80. Unless otherwise reserved pursuant to this Consent Decree, the Settling
27 Defendants agree to waive all claims or causes of action that they may have for all matters
28 relating to (i) the Work performed or to be performed under this Consent Decree, and (ii)
the Past Response Costs and Oversight Costs, including causes of action in contribution,
against each other individual Settling Defendant, except for any failure by any other
individual Settling Defendant to meet one of its obligations under this Consent Decree.

a. In addition, Settling Defendants agree to withhold the filing of third-
party litigation for one year from the date of entry of this Consent Decree for all matters
relating to the Site, including for contribution, against the following persons:

(1) any person whose liability to Settling Defendants with respect to
the Site is based solely on having arranged for the disposal or treatment, or for transport for
disposal or treatment, of hazardous substances at the Site, or having accepted for transport
for disposal or treatment of hazardous substances at the Site, if:

(a) any materials contributed by such person to the Site
constituting Municipal Solid Waste (MSW) or Municipal Sewage Sludge (MSS) did not exceed
0.2% of the total volume of waste at the Site; and

(b) any materials contributed by such person to the Site
containing hazardous substances, but not constituting MSW or MSS, did not exceed the
greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid
material or 200 pounds of solid material.

1 (2) any person whose liability to Settling Defendants with respect to
2 the Site is based solely on having arranged for the disposal, treatment, or transport for
3 disposal or treatment, or accepted for transport for disposal or treatment of hazardous
4 substances at the Site, if the materials contributed by such person to the Site containing
5 hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at
the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials. The waiver set
forth herein in subparagraphs (1) and (2) shall not apply to any claim or cause of action
against any person meeting the above criteria if EPA has determined that such material
contributed or could contribute significantly to the costs of response at the Site.

6 **XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

7 81. Nothing in this Consent Decree shall be construed to create any rights in, or
8 grant any cause of action to, any person not a Party to this Consent Decree. The preceding
9 sentence shall not be construed to waive or nullify any rights that any person not a
10 signatory to this Consent Decree may have under applicable law. Each of the Parties
11 expressly reserves any and all rights (including, but not limited to, any right to
contribution), defenses, claims, demands, and causes of action which each Party may have
with respect to any matter, transaction, or occurrence relating in any way to the Site
against any person not a Party hereto.

12 82. The Parties agree, and by entering this Consent Decree this Court finds, that
13 the Settling Defendants and the Settling Federal Agency are entitled, as of the effective date
14 of this Consent Decree, to protection from contribution actions or claims as provided by
CERCLA Section 113(f)(2), 42 U.S.C. Section 9613(f)(2) for matters addressed in this
Consent Decree.

15 83. The Settling Work Defendants agree that with respect to any suit or claim for
16 contribution brought by them for matters related to this Consent Decree they will notify
the United States in writing no later than thirty (30) days prior to the initiation of such suit
or claim.

17 84. The Settling Defendants also agree that with respect to any suit or claim for
18 contribution brought against them for matters related to this Consent Decree they will
19 notify in writing the United States within ten (10) days of service of the complaint on them.
In addition, the Settling Defendants shall notify the United States within seven (7) days of
service or receipt of any Motion for Summary Judgment regarding such suit or claim and
within ten (10) days of receipt of any order from a court setting such case for trial.

20 85. In any subsequent administrative or judicial proceeding initiated by the
21 United States for injunctive relief, recovery of response costs, or other appropriate relief
22 relating to the Site, the Settling Defendants shall not assert, and may not maintain, any
23 defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue
preclusion, claim-splitting, or other defenses based upon any contention that the claims
raised by the United States in the subsequent proceeding were or should have been brought
in the instant case; provided, however, that nothing in this Paragraph affects the
enforceability of the covenants not to sue set forth in Section XXI (Covenants by Plaintiff).

XXIV. ACCESS TO INFORMATION

86. The Settling Work Defendants shall provide to the EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain-of-custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. The Settling Work Defendants shall also make available to the EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

87. a. The Settling Work Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. Section 9604(e)(7), and 40 C.F.R. Section 2.203(b). Documents or information determined to be confidential by the EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to the EPA, or if the EPA has notified the Settling Work Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to the Settling Work Defendants.

b. The Settling Work Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege, the joint-defense privilege amongst the Settling Defendants or any other privilege recognized by federal law. If the Settling Work Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by the Settling Work Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

88. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXV. RETENTION OF RECORDS

88.1 The United States acknowledges that the Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

89. Until 5 years after the Settling Work Defendants' receipt of the EPA's final notification under this Consent Decree pursuant to Paragraph 39 of Section XIII (Certification of Completion), each Settling Defendant shall preserve and retain all records

1 and documents now in its possession or control or which come into its possession or control
2 that relate in any manner to the performance of the Work or liability of any person for
3 response actions conducted and to be conducted at the Site, regardless of any corporate
4 retention policy to the contrary. Until 5 years after the Settling Work Defendants' receipt
5 of the EPA's notification pursuant to Paragraph 39 of Section XIII (Certification of
6 Completion), Settling Defendants shall also instruct their contractors and agents to
7 preserve all documents, records, and information of whatever kind, nature or description
8 relating to the performance of the Work.

9 90. At the conclusion of this document retention period, the Settling Defendants
10 shall notify the United States at least ninety (90) days prior to the destruction of any such
11 records or documents, and, upon request by the United States, Settling Defendants shall
12 deliver any such records or documents to the EPA. The Settling Defendants may assert
13 that certain documents, records and other information are privileged under the attorney-
14 client privilege, the joint-defense privilege amongst the Settling Defendants or any other
15 privilege recognized by federal law. If the Settling Defendants assert such a privilege, they
16 shall provide the Plaintiff with the following: (1) the title of the document, record, or
17 information; (2) the date of the document, record, or information; (3) the name and title of
18 the author of the document, record, or information; (4) the name and title of each
19 addressee and recipient; (5) a description of the subject of the document, record, or
20 information; and (6) the privilege asserted by the Settling Defendants. Settling Defendants
21 shall be required to retain all documents over which a privilege has been asserted until the
22 applicability of the privilege is formally determined or the United States waives in writing
23 any interest in the documents to which a privilege has been claimed. However, no
24 documents, reports or other information created or generated pursuant to the
25 requirements of the Consent Decree shall be withheld on the grounds that they are
26 privileged.

27 91. Each Settling Defendant hereby certifies individually that, to the best of its
28 knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded,
destroyed or otherwise disposed of any records, documents or other information relating to
its potential liability regarding the Site since notification of potential liability by the United
States or the State or the filing of suit against it regarding the Site and that it has fully
complied with any and all the EPA requests for information pursuant to Section 104(e) and
122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C.
6927 regarding the Site.

XXVI. NOTICES AND SUBMISSIONS

92. Whenever, under the terms of this Consent Decree, written notice is required
to be given or a report or other document is required to be sent by one Party to another, it
shall be directed to the individuals at the addresses specified below, unless those individuals
or their successors give notice of a change to the other Parties in writing. All notices and
submissions shall be considered effective upon receipt, unless otherwise provided. Written
notice as specified herein shall constitute complete satisfaction of any written notice
requirement of the Consent Decree with respect to the United States, the EPA, the Settling
Federal Agency and the Settling Defendants, respectively.

1 As to the United States:

2 Chief, Environmental Enforcement Section
3 Environment and Natural Resources Division
4 U.S. Department of Justice
5 P.O. Box 7611
6 Ben Franklin Station
7 Washington, D.C. 20044-7611
8 Re: DJ #90-11-3-06529

9 and

10 Director, Superfund Division
11 United States Environmental Protection Agency
12 Region 9
13 75 Hawthorne Street
14 San Francisco, CA 94105

15 As to EPA:

16 Michelle Schutz
17 EPA Project Coordinator
18 United States Environmental Protection Agency Region IX
19 75 Hawthorne Street
20 San Francisco, CA 94105

21 As to the Settling Work Defendants:

22 De Maximis
23 Settling Work Defendants' Project Coordinator
24 5225 Canyon Crest Drive, Building 200, Suite 253
25 Riverside, California 92507

26 Boone & Associates
27 Settling Work Defendants' Coordinator
28 901 Corporate Center Drive, Suite 204
Monterey Park, California 91754

XXVII. EFFECTIVE DATE

93. The effective date of this Consent Decree shall be the date upon which this
Consent Decree is entered by the Court, except as otherwise provided herein.

1 **XXVIII. RETENTION OF JURISDICTION**

2 94. This Court retains jurisdiction over both the subject matter of this Consent
3 Decree and the Settling Defendants for the duration of the performance of the terms and
4 provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to
5 the Court at any time for such further order, direction, and relief as may be necessary or
appropriate for the construction or modification of this Consent Decree, or to effectuate or
enforce compliance with its terms, or to resolve disputes in accordance with Section XIX
(Dispute Resolution) hereof.

6 **XXIX. APPENDICES**

7 95. The following appendices are attached to and incorporated into this Consent
8 Decree:

9 "Appendix A" is the SOW.

10 "Appendix B" is a map of the Phase 1a Area.

11 "Appendix C" is the complete list of the Settling Cash Defendants.

12 "Appendix D" is the complete list of the Settling Work Defendants.

13 "Appendix E" is UAO.

14 "Appendix F" is the complete list of the payment schedules for those certain Settling
Cash Defendants.

15 **XXX. COMMUNITY RELATIONS**

16 96. The Settling Work Defendants shall propose to the EPA their participation
17 in the Community Relations Plan to be developed by the EPA. The EPA will determine the
18 appropriate role for the Settling Work Defendants under the Plan. The Settling Work
19 Defendants shall also cooperate with the EPA in providing information regarding the
20 Work to the public. As requested by the EPA, the Settling Work Defendants shall
participate in the preparation of such information for dissemination to the public and in
public meetings which may be held or sponsored by the EPA to explain activities relating to
the Work.

21 **XXXI. MODIFICATION**

22 97. Schedules specified in this Consent Decree for completion of the Work may
23 be modified by agreement of the EPA and the Settling Work Defendants. All such
modifications shall be made in writing.

24 98. Except as provided in Paragraph 11 (Modification to the SOW or Related
25 Deliverables), no material modifications shall be made to the SOW without written
26 notification to and written approval of the EPA, the Settling Work Defendants, and the
27 Court. Modifications to the SOW that do not materially alter that document may be made
28 by written agreement between the EPA, after providing a reasonable opportunity for
review and comment by the State, and the Settling Work Defendants.

1 99. Nothing in this Consent Decree shall be deemed to alter the Court's power to
2 enforce, supervise or approve modifications to this Consent Decree.

3 **XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

4 100. This Consent Decree shall be lodged with the Court for a period of not less
5 than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of
6 CERCLA, 42 U.S.C. Section 9622(d)(2), and 28 C.F.R. Section 50.7. The United States
7 reserves the right to withdraw or withhold its consent if the comments regarding the
Consent Decree disclose facts or considerations which indicate that the Consent Decree is
inappropriate, improper, or inadequate. The Settling Work Defendants consent to the
entry of this Consent Decree without further notice.

8 101. If for any reason the Court should decline to approve this Consent Decree in
9 the form presented, this agreement is voidable at the sole discretion of any Party and the
terms of the agreement may not be used as evidence in any litigation between the Parties.

10 **XXXIII. SIGNATORIES/SERVICE**

11 102. Each undersigned representative of a Settling Defendant to this Consent
12 Decree and the Assistant Attorney General for Environment and Natural Resources of the
13 Department of Justice certifies that he or she is fully authorized to enter into the terms and
conditions of this Consent Decree and to execute and legally bind such Party to this
Consent Decree.

14 103. Each Settling Defendant hereby agrees not to oppose entry of this Consent
15 Decree by this Court or to challenge any provision of this Consent Decree unless the United
States has notified the Settling Defendants in writing that it no longer supports entry of the
Consent Decree.

16 104. Each Settling Defendant shall identify, on the attached signature page, the
17 name, address and telephone number of an agent who is authorized to accept service of
18 process by mail on behalf of that Party with respect to all matters arising under or relating
19 to this Consent Decree. The Settling Defendants hereby agree to accept service in that
manner and to waive the formal service requirements set forth in Rule 4 of the Federal
Rules of Civil Procedure and any applicable local rules of this Court, including, but not
limited to, service of a summons.

20
21 SO ORDERED THIS 26th DAY OF Feb, 2000.

22
23 TERRY J. HATTER, JR.

24 Honorable
25 United States District Judge

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
2 United States v. Abex Aerospace Division, et al., relating to the Omega Chemical
3 Corporation Superfund Site.

4 FOR THE UNITED STATES OF AMERICA

5 Date:

Lois J. Schiffer 9/7/90
6 LOIS J. SCHIFFER
7 Assistant Attorney General
8 Environment and Natural Resources Division
9 U.S. Department of Justice
10 Washington, D.C. 20530

11 KARL J. FINGERHOOD
12 Trial Attorney
13 Environmental Enforcement Section
14 Environment and Natural Resources Division
15 U.S. Department of Justice
16 P.O. Box 7611
17 Washington, D.C. 20044-7611

Keith Takata
18 KEITH TAKATA
19 Director, Superfund Division
20 U.S. Environmental Protection Agency
21 Region IX
22 75 Hawthorne Street
23 San Francisco, CA 94105

24 DAVID RABBINO
25 Assistant Regional Counsel
26 U.S. Environmental Protection Agency
27 Region IX
28 75 Hawthorne Street
San Francisco, CA 94105

Exhibit 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Sent by Certified Mail

November 28, 2006

Leslie R. Schenck
Omega Chemical Site PRP Organized Group
Garvey Schubert Barer
1191 Second Avenue
Seattle, WA 98101-2939

RE: EPA Request for Reimbursement of Oversight Costs 2005-2006
Omega Chemical Superfund Site (SSID 09BC)

Dear Ms. Schenck:

This letter serves to request payment in the amount of \$363,831.77 for costs incurred by the United States Environmental Protection Agency ("EPA") in overseeing the Omega Chemical Superfund Site PRP Organized Group's (OPOG's) work at the Omega Chemical Superfund Site ("Site") in Whittier, California. Enclosed with this letter is an itemized summary of the EPA costs incurred July 1, 2005 through July 31, 2006. I would also like to respond to certain comments in your May 15, 2006 letter to Elizabeth Cox of EPA. In that letter, you identified four categories of work being done by EPA, none of which OPOG considers "Work" as defined in the Partial Consent Decree. Those categories, according to your letter, are as follows.

- EPA overseeing work done by OPOG under more than one Consent Decree
- EPA overseeing work pursuant to a 106 Order by a group unrelated to OPOG
- EPA conducting regional investigations itself, and
- EPA doing work related to de minimis settlements and work related to developing a scope of work for an additional Consent Decree

EPA and OPOG have signed an amendment (*First Amendment*) to the original Partial Consent Decree (Partial CD) to incorporate mitigation of indoor air contamination at Skateland. We assume that your reference to "more than one Consent Decree" means the Partial CD and the First Amendment. EPA oversight of OPOG, as specified in the Statement of Work within each agreement, is clearly defined as "Work".

EPA oversight of the Omega Small Volume Group (OSVOG) under a 106 Order, and "regional" work done by EPA are billed to a separate account code as previously explained to OPOG.

EPA's de minimis settlement has been completed and no costs related to that settlement appear in the current oversight bill.

Finally, EPA's effort to develop a scope of work for the First Amendment is also "Work" as defined in the Partial CD; therefore, the corresponding oversight costs are included in this oversight bill.

An overview of costs incurred during this billing period follows. Note that two categories of costs are being further reviewed by EPA, and therefore are not included in this oversight bill: (1) costs under the Multi-Site Cooperative Agreement to support the California EPA Department of Toxic Substances Control (DTSC) oversight work on the Site and (2) Environmental Services Assistance Team (ESAT) contract costs. The appropriate share of those costs related to OPOG's work will be included in future oversight bills.

Regional Payroll Costs: These include labor costs for EPA employees conducting or supporting oversight work at Operable Unit One (i.e., the Phase 1a Area or OU-1). The amount billed is \$76,067.55.

Regional Travel Costs: These include travel costs for EPA employees conducting or supporting OU-1 work. The amount billed is \$1,816.49.

Records Management Support Services (RMSS): The Superfund Records Center is managed by ASRC Aerospace contractors. The contractors collected, photocopied, organized, indexed, scanned, and stored Omega site documents relating to OU-1. In addition, the contractor established files for OU-1 documents and organized and indexed the files in accordance with the Region's document-style indexing and retrieval system. The system is called Superfund Document Management System (SDMS). ASRC tracks costs for the Omega Chemical Site by operable unit. The costs included in the oversight bill are only for OU-1. The amount billed is \$9,908.85.

Response Action Contract CH2M Hill Contract Number 68-W9-8225: All CH2M Hill costs included in this request for payment were incurred under a work assignment that is unique to OU-1. Note, however, that a new work assignment was recently created to track costs associated with EPA's oversight of removal actions being conducted by OPOG (i.e., the OU-1 groundwater pump and treat system and the response to indoor air contamination at Skateland). All "regional" work is done under a separate work assignment, and no costs associated with that work assignment are included in this bill. As an attachment to this letter, EPA is providing summary pages from each monthly status report (MSR) submitted to EPA by CH2M Hill during the billing period. Although not required under the terms of the Consent Decree, this information is being provided to facilitate OPOG's review and payment of the corresponding costs. The amount billed is \$170,537.01.

In your May 15, 2006 letter to Elizabeth Cox, you indicated that other information in the MSRs,

Ms. Leslie R. Schenck
November 28, 2006
Page 3

which OPOG requested and EPA provided for the previous billing cycle, is not useful to OPOG. Therefore that information is not being provided with this oversight bill. In the May 15th letter, you also requested that EPA provide "all consultants' supporting documentation at the level of detail of daily time sheets or other equivalent documentation." EPA is not required to provide any such information under the terms of the Partial CD and moreover, does not have documents responsive to your request. Thus, we are not providing such documents.

EPA Indirect Costs: These are EPA's overhead costs used to support site-specific work. The amount billed is \$105,501.87.

According to the Partial CD (#00-12471-TIH) entered on February 28, 2001, the Settling Work Defendants shall reimburse the United States for all Oversight Costs incurred by the United States in connection with the Work done pursuant to the Consent Decree not inconsistent with the National Contingency Plan. The United States will send the Settling Work Defendants a bill requiring payment for all response costs incurred by the United States with respect to the Partial CD on a periodic basis. This letter constitutes such a bill.

EPA requests that you remit a check for \$363,831.77 or transfer the payment electronically within thirty (30) calendar days of receipt of this letter. If payment is made by check, the check should be made payable to the U.S. EPA Hazardous Substances Superfund. Instructions for electronic submission of your payment are enclosed with this letter. The check and accompanying transmittal letter should clearly reference the identity of the Site (Omega Chemical Superfund Site 09BC) and should be sent to:

U.S. EPA – Region 9
ATTN: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

For electronic funds transfers, please send to the following address:

Mellon Bank
ABA 043000261
Account 9109125
22 Morrow Drive
Pittsburgh, PA 15235

SWIFT Address: MELNUS3P (needed only for international transfers)

Ms. Leslie R. Schenck
November 28, 2006
Page 4

Please send a copy of the check and transmittal letter, and direct any questions concerning this billing to Elaine Chan at:

U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, (SFD-7-5)
San Francisco, CA 94105
(415) 972-3128

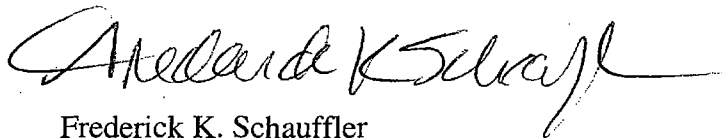
If you have any legal questions regarding this matter please contact Steve Berninger at:

U.S. Environmental Protection Agency
Office of Regional Counsel
75 Hawthorne Street, (ORC3)
San Francisco, CA 94105
(415) 972-3909

In accordance with Section 107(a) of CERCLA, if payment is not received within thirty (30) days of receipt of this notice, interest on past costs incurred shall accrue from the date of receipt of this request for payment while interest on future costs shall accrue from the date of expenditure. Interest rates are variable. The rate applicable on any unpaid amounts for any fiscal year is the same as is specified for interest on investments of the Hazardous Substance Superfund which is determined by the Department of the Treasury. The current rate of interest is 5.02% per annum.

Thank you for your cooperation with EPA and your attention to this matter.

Sincerely,



Frederick K. Schauffler
Chief, Site Cleanup Section 4
Superfund Division

Enclosure

cc: Steve Berninger
Chris Lichens
Elaine Chan
Karl Fingerhood, DOJ
Keith Millhouse, OPOG

Itemized Cost Summary

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC
Operable Unit(s): 01COSTS FROM 07/01/2005 THROUGH 07/31/2006
(CRP#119594 OU1 ONLY)

REGIONAL PAYROLL COSTS	\$76,067.55
REGIONAL TRAVEL COSTS	\$1,816.49
RECORDS MANAGEMENT SUPPORT SERVICES (RMSS)	
ASRC AEROSPACE CORP. (68-R9-0101)	\$9,908.85
RESPONSE ACTION CONTRACT	
CH2M HILL, INC (68-W9-8225)	\$170,537.01
EPA INDIRECT COSTS	\$105,501.87
Total Site Costs:	<u>\$363,831.77</u>

Table of Contents

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC
Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006
(CRP#119594 OU1 ONLY)

ITEMIZED COST SUMMARY	Section 1
REGIONAL PAYROLL COSTS	Section 2
REGIONAL TRAVEL COSTS	Section 3
RECORDS MANAGEMENT SUPPORT SERVICES (RMSS)	
ASRC AEROSPACE CORP. (68-R9-0101)	Section 4
RESPONSE ACTION CONTRACT	
CH2M HILL, INC (68-W9-8225)	Section 5
EPA INDIRECT COSTS SUMMARY	Section 6
EPA INDIRECT COSTS	Section 7

Regional Payroll Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC

Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006

(CRP#119594 OU1 ONLY)

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Hours</u>	<u>Payroll Costs</u>
PROPERTY ACCOUNTABLE OFFICER	2005	26	1.00	45.32
		27	1.00	45.33
			3.00	\$135.98
COX, ELIZABETH A.	2005	20	3.00	199.03
CHIEF, CASE DEVELOPMENT		21	5.00	331.71
		22	5.00	331.70
		23	8.00	530.72
		24	3.00	199.03
		25	7.00	469.60
		27	20.00	1,326.80
	2006	02	4.00	262.50
		03	2.00	126.30
		04	1.00	63.16
		05	11.00	694.68
		06	3.00	189.46
		08	4.00	265.26
		09	8.00	551.74
		10	4.00	275.86
		12	18.00	1,241.39
		13	11.00	758.63
		14	36.00	2,482.77
		15	9.00	620.70
		16	13.00	896.57
		17	19.00	1,310.37
		18	8.00	551.74
		19	2.00	135.28
			204.00	\$13,815.00
FONG, ROSE Y.T.	2006	03	0.50	27.27
ENVIRONMENTAL SCIENTIST		06	0.25	13.64
		16	0.25	14.15
			1.00	\$55.06
LICHENS, CHRISTOPHER W.	2005	20	59.00	3,153.30
Environmental Engineer		21	56.00	2,992.94
		22	45.00	2,405.04

Regional Payroll Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC

Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006

(CRP#119594 OU1 ONLY)

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Hours</u>	<u>Payroll Costs</u>
ADAMS, ELIZABETH J.	2005	22	6.00	466.12
CHIEF, SITE CLEANUP BRANCH		27	3.00	222.19
	2006	10	3.00	246.64
		11	3.00	242.35
			15.00	\$1,177.30
BAUER, RICHARD	2005	23	1.00	58.72
Environmental Scientist		27	1.00	58.06
	2006	14	3.00	183.27
			5.00	\$300.05
BERGES, JACK	2006	12	1.00	49.64
CHEMIST			1.00	\$49.64
CAGURANGAN, CHRISTOPHER	2005	26	2.50	112.61
CHEMIST	2006	02	2.00	90.08
		03	2.00	90.08
		04	2.00	92.81
		13	2.00	95.92
		15	5.00	239.83
			15.50	\$721.33
CHAN, ELAINE	2005	21	0.50	24.73
YEE, ELAINE		25	1.00	49.44
COST RECOVERY SPECIALIST	2006	02	0.50	24.73
		04	1.00	49.45
		05	0.50	25.42
		06	3.00	152.80
		10	2.00	106.10
		11	0.50	26.53
		12	2.00	106.13
		14	0.50	26.53
		18	0.50	29.02
			12.00	\$620.88
CORDINI, ALFRED J.	2005	25	1.00	45.33

Regional Payroll Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC

Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006

(CRP#119594 OU1 ONLY)

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Hours</u>	<u>Payroll Costs</u>
SCHAUFFLER, FREDERICK K	2006	06	2.50	157.66
		07	0.50	33.14
		08	6.00	397.68
		09	21.50	1,483.51
		10	1.50	103.50
		11	6.25	431.25
		12	8.00	552.01
		14	8.00	552.01
		15	4.50	310.50
		16	1.75	120.76
		17	0.75	51.76
		18	0.25	17.25
			121.75	\$8,191.35
Total Regional Payroll Costs			1,296.25	\$76,067.55

Regional Payroll Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC

Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006

(CRP#119594 OU1 ONLY)

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Hours</u>	<u>Payroll Costs</u>
LICHENS, CHRISTOPHER W.	2005	23	39.00	2,147.26
		24	71.00	3,909.10
		25	63.00	3,468.63
		26	38.00	2,129.19
		27	23.00	1,266.36
	2006	02	9.00	495.53
		03	18.00	991.06
		04	30.00	1,651.78
		05	26.00	1,431.54
		06	37.00	2,037.20
		07	48.00	2,639.48
		08	42.00	2,309.56
		09	64.00	3,663.13
		10	39.00	2,232.24
		11	54.00	3,090.76
		12	34.00	1,946.04
		13	15.00	858.56
		14	25.00	1,430.91
		15	9.00	515.84
		16	46.00	2,632.91
		17	13.00	744.06
		18	14.00	801.29
		19	1.00	57.25
			918.00	\$51,000.96
SCHAUFFLER, FREDERICK K ENVIRONMENTAL ENGINEER	2005	20	2.25	149.14
		21	10.25	679.36
		22	16.25	1,077.02
		23	6.25	414.25
		24	7.00	463.95
		25	8.25	546.79
		26	1.00	67.58
	2006	27	3.75	248.54
		02	1.75	112.98
		04	1.50	94.58
		05	2.00	126.13

Headquarters Payroll Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC

Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006

(CRP#119594 OU1 ONLY)

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Hours</u>	<u>Payroll Costs</u>
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Regional Travel Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC
Operable Unit(s): 01COSTS FROM 07/01/2005 THROUGH 07/31/2006
(CRP#119594 OU1 ONLY)

<u>Traveler/Vendor Name</u>	<u>Travel Number</u>	<u>Treasury Schedule</u>	<u>Treasury Schedule Date</u>	<u>Travel Costs</u>
COX, ELIZABETH A. CHIEF, CASE DEVELOPMENT	TM0411979	ACHA06096	04/10/2006	262.60
				<hr/> \$262.60
LICHENS, CHRISTOPHER W.	TM0364735	ACHA05312	11/10/2005	296.39
	TM0389055	ACHA06019	01/23/2006	239.63
	TM0392008	ACHA06033	02/06/2006	243.40
				<hr/> \$779.42
SCHAUFFLER, FREDERICK K	TM0352011	ACHA05259	09/20/2005	413.77
ENVIRONMENTAL ENGINEER	TM0391091	ACHA06020	01/24/2006	158.60
	TM0391826	ACHA06034	02/07/2006	202.10
				<hr/> \$774.47
Total Regional Travel Costs				<hr/> <hr/> \$1,816.49

Headquarters Travel Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC
Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006
(CRP#119594 OU1 ONLY)

<u>Traveler/Vendor Name</u>	<u>Travel Number</u>	<u>Treasury Schedule</u>	<u>Treasury Schedule Date</u>	<u>Travel Costs</u>
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Contract Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC
Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006
(CRP#119594 OU1 ONLY)

RECORDS MANAGEMENT SUPPORT SERVICES (RMSS)

Contractor Name: ASRC AEROSPACE CORP.
EPA Contract Number: 68-R9-0101
Project Officer(s): CHAN, ELAINE
Dates of Service: From: 04/25/2005 To: 05/28/2006
Summary of Service: Records Management Support Services
Total Costs: \$9,908.85

<u>Voucher Number</u>	<u>Voucher Date</u>	<u>Voucher Amount</u>	<u>Treasury Schedule Number and Date</u>	<u>Site Amount</u>
51	06/09/2005	191,508.24	R5549 07/07/2005	989.41
52	07/06/2005	150,823.77	R5602 08/03/2005	58.56
53	08/10/2005	181,689.72	R5668 09/07/2005	4,094.69
54	09/07/2005	154,944.40	R6005 10/05/2005	2,407.30
55	10/14/2005	178,491.58	R6072 11/09/2005	546.91
56	11/07/2005	83,912.67	R6119 12/01/2005	759.67
57	11/09/2005	60,492.23	R6123 12/05/2005	48.66
58	12/16/2005	142,412.19	R6210 01/13/2006	48.79
59	01/17/2006	171,741.97	R6263 02/10/2006	234.01
60	01/10/2006	144,001.64	R6320 03/08/2006	107.87
61	03/06/2006	151,044.29	R6366 03/30/2006	99.46
62	04/05/2006	154,589.69	R6422 05/02/2006	344.09
63	05/08/2006	185,495.64	R6484 06/01/2006	140.74
64	06/05/2006	144,609.23	R6544 06/29/2006	28.69
Total:				<u>\$9,908.85</u>

Contract Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC
Operable Unit(s): 01COSTS FROM 07/01/2005 THROUGH 07/31/2006
(CRP#119594 OU1 ONLY)RESPONSE ACTION CONTRACT

Contractor Name: CH2M HILL, INC
EPA Contract Number: 68-W9-8225
Project Officer(s): NANBU, LINDA
Dates of Service: From: 04/30/2005 To: 04/28/2006
Summary of Service: Response Action
Total Costs: \$170,537.01

<u>Voucher Number</u>	<u>Schedule Number</u>	<u>Rate Type</u>	<u>Annual Allocation Rate</u>
154	05572	Provisional	0.048153
158Z	05632	Provisional	0.048153
156	05636	Provisional	0.048153
162	05693	Provisional	0.048153
164	06033	Provisional	0.048153
166COR	06097	Provisional	0.048153
171	06148	Provisional	0.048153
172	06148	Provisional	0.048153
175	06212	Provisional	0.048153
177	06280	Provisional	0.048153
178	06280	Provisional	0.048153
181	06343	Provisional	0.048153
183	06393	Provisional	0.048153
185Z	06466	Provisional	0.048153
187	06466	Provisional	0.048153
189	06517	Provisional	0.048153

Contract Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC
Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006
(CRP#119594 OU1 ONLY)

RESPONSE ACTION CONTRACT

Contractor Name: CH2M HILL, INC
EPA Contract Number: 68-W9-8225
Project Officer(s): NANBU, LINDA
Dates of Service: From: 04/30/2005 To: 04/28/2006
Summary of Service: Response Action
Total Costs: \$170,537.01

Voucher Number	Voucher Date	Voucher Amount	Treasury Schedule Number and Date	Site Amount	Annual Allocation
154	06/20/2005	1,146,492.15	05572 07/15/2005	13,325.60	641.67
158Z	07/22/2005	-80,432.29	05632 08/16/2005	-1,395.90	-67.22
156	07/20/2005	1,431,923.07	05636 08/17/2005	7,007.18	337.42
162	08/20/2005	1,688,991.05	05693 09/15/2005	15,471.56	745.00
164	09/20/2005	1,002,686.91	06033 10/20/2005	12,931.54	622.69
166COR	10/25/2005	2,126,866.97	06097 11/21/2005	14,338.11	690.42
171	11/20/2005	424,516.44	06148 12/14/2005	20.70	1.00
172	11/20/2005	854,164.72	06148 12/14/2005	8,144.42	392.18
175	12/20/2005	926,959.19	06212 01/17/2006	16,404.97	789.95
177	01/20/2006	-12,822.69	06280 02/17/2006	-862.20	-41.51
178	01/20/2006	1,167,173.64	06280 02/17/2006	10,066.99	484.76
181	02/20/2006	1,173,737.54	06343 03/21/2006	17,084.40	822.66
183	03/20/2006	1,244,965.96	06393 04/13/2006	24,024.11	1,156.83
185Z	03/27/2006	-82,624.08	06466 05/23/2006	-495.23	-23.85
187	04/20/2006	1,570,223.93	06466 05/23/2006	18,335.67	882.92
189	05/20/2006	1,233,555.74	06517 06/16/2006	8,300.48	399.69
Total:				\$162,702.40	\$7,834.61

EPA Indirect Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC
Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006
(CRP#119594 OU1 ONLY)

<u>Fiscal Year</u>	<u>Direct Costs</u>	<u>Indirect Rate(%)</u>	<u>Indirect Costs</u>
2005	71,256.63	40.84% *	29,101.19
2006	187,073.27	40.84% *	76,400.68
	<u>258,329.90</u>		
Total EPA Indirect Costs			<u>\$105,501.87</u>

*PROVISIONAL rates subject to change when final rates are approved and calculated.

EPA Indirect Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC
Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006
(CRP#119594 OU1 ONLY)

PAYROLL DIRECT COSTS

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
ADAMS, ELIZABETH J.	2005	22	466.12	40.84%	190.36
		27	222.19	40.84%	90.74
			688.31		\$281.10
BAUER, RICHARD	2005	23	58.72	40.84%	23.98
		27	58.06	40.84%	23.71
			116.78		\$47.69
CAGURANGAN, CHRISTOPHER	2005	26	112.61	40.84%	45.99
			112.61		\$45.99
CHAN, ELAINE	2005	21	24.73	40.84%	10.10
		25	49.44	40.84%	20.19
			74.17		\$30.29
CORDINI, ALFRED J.	2005	25	45.33	40.84%	18.51
		26	45.32	40.84%	18.51
		27	45.33	40.84%	18.51
			135.98		\$55.53
COX, ELIZABETH A.	2005	20	199.03	40.84%	81.28
		21	331.71	40.84%	135.47
		22	331.70	40.84%	135.47
		23	530.72	40.84%	216.75
		24	199.03	40.84%	81.28
		25	469.60	40.84%	191.78

EPA Indirect Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC

Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006

(CRP#119594 OU1 ONLY)

PAYROLL DIRECT COSTS

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
COX, ELIZABETH A.	2005	27	1,326.80	40.84%	541.87
			3,388.59		\$1,383.90
LICHENS, CHRISTOPHER W.	2005	20	3,153.30	40.84%	1,287.81
		21	2,992.94	40.84%	1,222.32
		22	2,405.04	40.84%	982.22
		23	2,147.26	40.84%	876.94
		24	3,909.10	40.84%	1,596.48
		25	3,468.63	40.84%	1,416.59
		26	2,129.19	40.84%	869.56
		27	1,266.36	40.84%	517.18
			21,471.82		\$8,769.10
SCHAUFFLER, FREDERICK K	2005	20	149.14	40.84%	60.91
		21	679.36	40.84%	277.45
		22	1,077.02	40.84%	439.85
		23	414.25	40.84%	169.18
		24	463.95	40.84%	189.48
		25	546.79	40.84%	223.31
		26	67.58	40.84%	27.60
		27	248.54	40.84%	101.50
			3,646.63		\$1,489.28
Total Fiscal Year 2005 Payroll Direct Costs:			29,634.89		\$12,102.88

EPA Indirect Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC

Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006

(CRP#119594 OU1 ONLY)

TRAVEL DIRECT COSTS

<u>Traveler/Vendor Name</u>	<u>Travel Number</u>	<u>Treasury Schedule Date</u>	<u>Travel Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
SCHAUFFLER, FREDERICK K	TM0352011	09/20/2005	413.77	40.84%	168.98
			413.77		\$168.98
Total Fiscal Year 2005 Travel Direct Costs:			413.77		\$168.98

OTHER DIRECT COSTS

<u>Contract, IAG, SCA, Misc.NO</u>	<u>Voucher Number</u>	<u>Treasury Schedule Date</u>	<u>Site Amount</u>	<u>Annual/SMO Allocation Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
68-R9-0101	51	07/07/2005	989.41	0.00	40.84%	404.08
	52	08/03/2005	58.56	0.00	40.84%	23.92
	53	09/07/2005	4,094.69	0.00	40.84%	1,672.27
			5,142.66	0.00		\$2,100.27
68-W9-8225	154	07/15/2005	13,325.60	641.67	40.84%	5,704.23
	158Z	08/16/2005	-1,395.90	-67.22	40.84%	-597.54
	156	08/17/2005	7,007.18	337.42	40.84%	2,999.53
	162	09/15/2005	15,471.56	745.00	40.84%	6,622.84
			34,408.44	1,656.87		\$14,729.06
Total Fiscal Year 2005 Other Direct Costs:			39,551.10	1,656.87		\$16,829.33
Total Fiscal Year 2005:			71,256.63			\$29,101.19

PAYROLL DIRECT COSTS

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
ADAMS, ELIZABETH J.	2006	10	246.64	40.84%	100.73

EPA Indirect Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC
Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006
(CRP#119594 OU1 ONLY)

PAYROLL DIRECT COSTS

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
ADAMS, ELIZABETH J.	2006	11	242.35	40.84%	98.98
			488.99		\$199.71
BAUER, RICHARD	2006	14	183.27	40.84%	74.85
			183.27		\$74.85
BERGES, JACK	2006	12	49.64	40.84%	20.27
			49.64		\$20.27
CAGURANGAN, CHRISTOPHER	2006	02	90.08	40.84%	36.79
		03	90.08	40.84%	36.79
		04	92.81	40.84%	37.90
		13	95.92	40.84%	39.17
		15	239.83	40.84%	97.95
			608.72		\$248.60
CHAN, ELAINE	2006	02	24.73	40.84%	10.10
		04	49.45	40.84%	20.20
		05	25.42	40.84%	10.38
		06	152.80	40.84%	62.40
		10	106.10	40.84%	43.33
		11	26.53	40.84%	10.83
		12	106.13	40.84%	43.34
		14	26.53	40.84%	10.83
		18	29.02	40.84%	11.85
			546.71		\$223.26
COX, ELIZABETH A.	2006	02	262.50	40.84%	107.21
		03	126.30	40.84%	51.58

EPA Indirect Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC

Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006

(CRP#119594 OU1 ONLY)

PAYROLL DIRECT COSTS

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
COX, ELIZABETH A.	2006	04	63.16	40.84%	25.79
		05	694.68	40.84%	283.71
		06	189.46	40.84%	77.38
		08	265.26	40.84%	108.33
		09	551.74	40.84%	225.33
		10	275.86	40.84%	112.66
		12	1,241.39	40.84%	506.98
		13	758.63	40.84%	309.82
		14	2,482.77	40.84%	1,013.96
		15	620.70	40.84%	253.49
		16	896.57	40.84%	366.16
		17	1,310.37	40.84%	535.16
		18	551.74	40.84%	225.33
		19	135.28	40.84%	55.25
			10,426.41		\$4,258.14
FONG, ROSE Y.T.	2006	03	27.27	40.84%	11.14
		06	13.64	40.84%	5.57
		16	14.15	40.84%	5.78
			55.06		\$22.49
LICHENS, CHRISTOPHER W.	2006	02	495.53	40.84%	202.37
		03	991.06	40.84%	404.75
		04	1,651.78	40.84%	674.59
		05	1,431.54	40.84%	584.64
		06	2,037.20	40.84%	831.99
		07	2,639.48	40.84%	1,077.96
		08	2,309.56	40.84%	943.22
		09	3,663.13	40.84%	1,496.02
		10	2,232.24	40.84%	911.65
		11	3,090.76	40.84%	1,262.27
		12	1,946.04	40.84%	794.76

EPA Indirect Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC

Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006

(CRP#119594 OU1 ONLY)

PAYROLL DIRECT COSTS

<u>Employee Name</u>	<u>Fiscal Year</u>	<u>Pay Period</u>	<u>Payroll Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
LICHENS, CHRISTOPHER W.	2006	13	858.56	40.84%	350.64
		14	744.07	40.84%	303.88
			686.84	40.84%	280.51
		15	515.84	40.84%	210.67
		16	2,575.66	40.84%	1,051.90
			57.25	40.84%	23.38
		17	572.36	40.84%	233.75
			171.70	40.84%	70.12
		18	400.65	40.84%	163.63
			400.64	40.84%	163.62
		19	57.25	40.84%	23.38
			29,529.14		\$12,059.70
SCHAUFFLER, FREDERICK K	2006	02	112.98	40.84%	46.14
		04	94.58	40.84%	38.63
		05	126.13	40.84%	51.51
		06	157.66	40.84%	64.39
		07	33.14	40.84%	13.53
		08	397.68	40.84%	162.41
		09	1,483.51	40.84%	605.87
		10	103.50	40.84%	42.27
		11	431.25	40.84%	176.12
		12	552.01	40.84%	225.44
		14	552.01	40.84%	225.44
		15	310.50	40.84%	126.81
		16	120.76	40.84%	49.32
		17	51.76	40.84%	21.14
		18	17.25	40.84%	7.04
			4,544.72		\$1,856.06
Total Fiscal Year 2006 Payroll Direct Costs:			46,432.66		\$18,963.08

EPA Indirect Costs

OMEGA RECOVERY SERV., CA, CA SITE ID = 09 BC

Operable Unit(s): 01

COSTS FROM 07/01/2005 THROUGH 07/31/2006

(CRP#119594 OU1 ONLY)

TRAVEL DIRECT COSTS

<u>Traveler/Vendor Name</u>	<u>Travel Number</u>	<u>Treasury Schedule Date</u>	<u>Travel Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
COX, ELIZABETH A.	TM0411979	04/10/2006	262.60	40.84%	107.25
			262.60		\$107.25
LICHENS, CHRISTOPHER W.	TM0364735	11/10/2005	296.39	40.84%	121.04
	TM0389055	01/23/2006	239.63	40.84%	97.86
	TM0392008	02/06/2006	243.40	40.84%	99.39
			779.42		\$318.29
SCHAUFFLER, FREDERICK K	TM0391091	01/24/2006	158.60	40.84%	64.77
	TM0391826	02/07/2006	202.10	40.84%	82.53
			360.70		\$147.30
Total Fiscal Year 2006 Travel Direct Costs:			1,402.72		\$572.84

OTHER DIRECT COSTS

<u>Contract, IAG, SCA, Misc.NO</u>	<u>Voucher Number</u>	<u>Treasury Schedule Date</u>	<u>Site Amount</u>	<u>Annual/SMO Allocation Costs</u>	<u>Ind. Rate (%)</u>	<u>Indirect Costs</u>
68-R9-0101	54	10/05/2005	2,407.30	0.00	40.84%	983.14
	55	11/09/2005	546.91	0.00	40.84%	223.36
	56	12/01/2005	759.67	0.00	40.84%	310.25
	57	12/05/2005	48.66	0.00	40.84%	19.87
	58	01/13/2006	48.79	0.00	40.84%	19.93
	59	02/10/2006	234.01	0.00	40.84%	95.57
	60	03/08/2006	107.87	0.00	40.84%	44.05
	61	03/30/2006	99.46	0.00	40.84%	40.62
	62	05/02/2006	344.09	0.00	40.84%	140.53
	63	06/01/2006	140.74	0.00	40.84%	57.48
	JVF3463	06/21/2006	-6,798.21	0.00	40.84%	-2,776.39
			8,383.89	0.00	40.84%	3,423.98

Omega Chemical Corp. OU-1 - RI/FS Oversight

Period: 04/30/2005 through 05/27/2005

Task 6 - Data Evaluation (DE)

- As directed by EPA.
- Review of PRPs' data, memoranda, work plans for additional soil and indoor air investigation, revised groundwater EE/CA (June), and attending teleconferences and meetings with EPA and OPOG are expected for the duration of the WA.

Task 14 - Administrative Record (AR)

None

E. Anticipated Changes

None

F. Variances - Contract Cost Adjustments

None

G. Problems and Recommended Solutions

Dollar and LOE expenditures have exceeded 75% of the EL. The Dollar and LOE expenditures are expected to be sufficient for the remainder of the period of performance.

MONTHLY STATUS REPORT

Omega Chemical Corp. OU-1 - RI/FS Oversight

Period: 04/30/2005 through 05/27/2005

Work Assignment No.: 174-RSBD-09BC
CH2M HILL Project No.: 183120
Team Sub Project No.:

Project Officer: Linda Nanbu
Work Assignment Mgr.: Chris Lichenis
Site Manager/Firm: Tom Perina/CH2M HILL

A. Expenditure Limit

2,206.6 (78.81%) of the LOE Expenditure Limit (2,800) and \$242,865.81 (79.63%) of the Dollar Expenditure Limit (\$305,000.00) has been expended.

B. Summary

CH2M HILL reviewed PRP data and memoranda covering additional investigation and interim mitigation measures and provided comments to EPA. CH2M HILL participated in conference calls with EPA and OPOG to discuss planned activities.

C. Activities Performed During Reporting Period

This section presents a description of activities performed on each task. *Note: Report 1 contains by task, names of staff, "P" levels, and number of hours worked for each individual.*

Task 1 - Project Planning and Support (PP)

- The SM, with the help of Support Staff, performed routine management, cost/schedule control, invoicing, staffing, and reporting (MSR) activities.
- The SM and Contract Administrator addressed OPOG's inquiries regarding project invoices.

Task 2 - Community Relations (CR)

No Activity

Task 3 - Field Investigation (FI)

No Activity

Task 5 - Analytical Support & Data Validation (AN)

No Activity

Task 6 - Data Evaluation (DE)

- The SM, Sr. Engineer, and Sr. Toxicologist reviewed PRPs' documents including the Phase 1A Area investigation report, Draft EECA, response to EPA comments on the Draft SSD WP, and response to EPA comments on the additional on-site soil investigation WP; prepared review memoranda, and attended conference calls with EPA and OPOG on additional investigation and mitigation of indoor air impacts at and near the Omega site.

Task 14 - Administrative Record (AR)

No Activity

D. Activities Planned During Next Reporting Period

This section includes a description of activities planned on each task during the next reporting period.

Task 1 - Project Planning and Support (PP)

- Perform routine management and reporting.

Task 2 - Community Relations (CR)

- As directed by EPA.

Task 3 - Field Investigation (FI)

- As directed by EPA.
- Field oversight is anticipated during groundwater sampling in August-September 2005, and during additional soil and indoor air investigation (likely in June-July 2005).

Task 5 - Analytical Support & Data Validation (AN)

- As directed by EPA.

Omega Chemical Corp. OU-1 - RI/FS Oversight*Period: 05/28/2005 through 06/24/2005***Task 6 - Data Evaluation (DE)**

- Review of PRPs' data, memoranda, work plans for additional soil and indoor air investigation, revised groundwater EE/CA (July), and attending teleconferences and meetings with EPA and OPOG are expected for the duration of the WA.

Task 14 - Administrative Record (AR)

None

E. Anticipated Changes

None

F. Variances - Contract Cost Adjustments

None

G. Problems and Recommended Solutions

Dollar and LOE expenditures have exceeded 75% of the EL. The Dollar and LOE expenditures are expected to be sufficient for the remainder of the period of performance.

MONTHLY STATUS REPORT

Omega Chemical Corp. OU-1 - RI/FS Oversight

Period: 05/28/2005 through 06/24/2005

Work Assignment No.: 174-RSBD-09BC
CH2M HILL Project No.: 183120
Team Sub Project No.:

Project Officer: Linda Nanbu
Work Assignment Mgr.: Chris Lichens
Site Manager/Firm: Tom Perina/CH2M HILL

A. Expenditure Limit

2,264.1 (80.86%) of the LOE Expenditure Limit (2,800) and \$249,872.99 (81.93%) of the Dollar Expenditure Limit (\$305,000.00) has been expended.

B. Summary

CH2M HILL reviewed PRP data and memoranda, and PRP's response to EPA's comments covering additional investigation and interim mitigation measures and provided comments to EPA. CH2M HILL participated in conference calls with EPA and OPOG to discuss planned activities and resolve comment issues.

C. Activities Performed During Reporting Period

This section presents a description of activities performed on each task. *Note: Report 1 contains by task, names of staff, "P" levels, and number of hours worked for each individual.*

Task 1 - Project Planning and Support (PP)

- The SM, with the help of Support Staff, performed routine management, cost/schedule control, invoicing, staffing, and reporting (MSR) activities.

Task 2 - Community Relations (CR)

No Activity

Task 3 - Field Investigation (FI)

No Activity

Task 5 - Analytical Support & Data Validation (AN)

- Sr. Chemist validated analytical data and prepared validation reports. The SM coordinated data validation.

Task 6 - Data Evaluation (DE)

- The SM, Sr. Engineer, and Sr. Toxicologist reviewed PRPs' response to EPA comments on the Draft SSD WP, on the additional on-site soil investigation WP, and on the groundwater EECA; prepared review memoranda, and attended conference calls with EPA and OPOG on comment resolution.
- Database Specialist updated project database. Sr. Chemist provided validated data and coordinated database update.

Task 14 - Administrative Record (AR)

No Activity

D. Activities Planned During Next Reporting Period

This section includes a description of activities planned on each task during the next reporting period.

Task 1 - Project Planning and Support (PP)

- Perform routine management and reporting.

Task 2 - Community Relations (CR)

- Provide support for a public meeting planned for August.

Task 3 - Field Investigation (FI)

- Field oversight is anticipated during groundwater sampling in August-September 2005, and during additional soil and indoor air investigation (likely in July-August 2005).

Task 5 - Analytical Support & Data Validation (AN)

- As directed by EPA.

Omega Chemical Corp. OU-1 - RI/FS Oversight*Period: 06/25/2005 through 07/29/2005***Task 5 - Analytical Support & Data Validation (AN)**

- As directed by EPA.

Task 6 - Data Evaluation (DE)

- Review of PRPs' data, memoranda, work plans for additional soil and indoor air investigation, final groundwater EE/CA (August), and attending teleconferences and meetings with EPA and OPOG are expected for the duration of the WA.

Task 14 - Administrative Record (AR)

None

E. Anticipated Changes

None

F. Variances - Contract Cost Adjustments

In accordance with the U.S. Environmental Protection Agency Indirect Cost Rate Agreement Number 050076 a special invoice was submitted during this reporting period to adjust the indirect rate for CH2M HILL labor billed to this work assignment during the period of January 2005 through June 2005 and the amount of that adjustment is reflected in the cumulative dollars invoiced for this project.

In accordance with Contract Clause G.1 - PAYMENT OF BASE FEE, a credit adjustment to the base fee amount invoiced to date is included in the July 2005 invoice to reconcile the ratio of LOE hours expended to the total LOE hours ordered in Option Period I.

G. Problems and Recommended Solutions

Dollar and LOE expenditures have exceeded 75% of the EL. The Dollar and LOE ELs are expected to be sufficient for the remainder of the Period of Performance.

MONTHLY STATUS REPORT

Omega Chemical Corp. OU-1 - RI/FS Oversight

Period: 06/25/2005 through 07/29/2005

Work Assignment No.: 174-RSBD-09BC
CH2M HILL Project No.: 183120
Team Sub Project No.:

Project Officer: Linda Nanbu
Work Assignment Mgr.: Chris Lichens
Site Manager/Firm: Tom Perina/CH2M HILL

A. Expenditure Limit

2,400.3 (85.73%) of the LOE Expenditure Limit (2,800) and \$263,948.65 (86.54%) of the Dollar Expenditure Limit (\$305,000.00) has been expended.

B. Summary

CH2M HILL reviewed PRP's EECA and provided comments to EPA. CH2M HILL participated in conference calls with EPA and OPOG to discuss planned activities and resolve comment issues. CH2M HILL assisted EPA in coordinating a public meeting, provided field investigation support, and provided analytical data validation support.

C. Activities Performed During Reporting Period

This section presents a description of activities performed on each task. *Note: Report 1 contains by task, names of staff, "P" levels, and number of hours worked for each individual.*

Task 1 - Project Planning and Support (PP)

- The SM, with the help of Support Staff, performed routine management, cost/schedule control, invoicing, staffing, and reporting (MSR) activities.

Task 2 - Community Relations (CR)

- Public Relations Specialist assisted EPA in coordinating a public meeting in August.

Task 3 - Field Investigation (FI)

- The SM coordinated and Task Manager and Project Scientist prepared for field oversight of soils investigation and groundwater sampling in August.

Task 5 - Analytical Support & Data Validation (AN)

- Sr. Chemist with support from a Data Base Specialist and two support staff validated analytical data and prepared validation reports. The SM coordinated data validation and sent validation reports to the Superfund Records Center.

Task 6 - Data Evaluation (DE)

- The SM, Sr. Engineer, and Sr. Toxicologist reviewed PRPs' groundwater EECA, updated Soils Investigation Work Plan and updated SSD submittal and prepared review comments, and attended conference calls with EPA and OPOG on comment resolution.
- Task Manager and Database Specialist updated project database.

Task 14 - Administrative Record (AR)

No Activity

D. Activities Planned During Next Reporting Period

This section includes a description of activities planned on each task during the next reporting period.

Task 1 - Project Planning and Support (PP)

- Perform routine management and reporting.

Task 2 - Community Relations (CR)

- Provide support for a public meeting planned for August.

Task 3 - Field Investigation (FI)

- Field oversight is anticipated during groundwater sampling in August 2005, and during additional soil and indoor air investigation August-September 2005.

Omega Chemical Corp. OU-1 - RI/FS Oversight*Period: 07/30/2005 through 08/26/2005***Task 3 - Field Investigation (FI)**

- Field oversight is anticipated during soil and indoor air investigation and SSD testing in September 2005.

Task 5 - Analytical Support & Data Validation (AN)

- As directed by EPA.

Task 6 - Data Evaluation (DE)

- Assist EPA in preparation of Action Memorandum on interim groundwater remedy in September.

Task 14 - Administrative Record (AR)

None

Task 15 - Work Assignment Closeout (CO)

- Closeout activity will be performed in September.

E. Anticipated Changes

None

F. Variances - Contract Cost Adjustments

None

G. Problems and Recommended Solutions

Dollar and LOE expenditures have exceeded 75% of the EL. The Dollar and LOE ELs are expected to be sufficient for the remainder of the Period of Performance.

MONTHLY STATUS REPORT

Omega Chemical Corp. OU-1 - RI/FS Oversight

Period: 07/30/2005 through 08/26/2005

Work Assignment No.: 174-RSBD-09BC
CH2M HILL Project No.: 183120
Team Sub Project No.:

Project Officer: Linda Nanbu
Work Assignment Mgr.: Chris Lichens
Site Manager/Firm: Tom Perina/CH2M HILL

A. Expenditure Limit

2,509.1 (89.61%) of the LOE Expenditure Limit (2,800) and \$276,880.19 (90.78%) of the Dollar Expenditure Limit (\$305,000.00) has been expended.

B. Summary

CH2M HILL reviewed PRP's Work Plans and provided comments to EPA. CH2M HILL participated in conference calls with EPA and OPOG to discuss planned activities and resolve comment issues. CH2M HILL assisted EPA in coordinating and attending a public meeting, performed field oversight, and validated analytical data.

C. Activities Performed During Reporting Period

This section presents a description of activities performed on each task. *Note: Report 1 contains by task, names of staff, "P" levels, and number of hours worked for each individual.*

Task 1 - Project Planning and Support (PP)

- The SM and a Sr. Process Engineer (Acting SM) with the help of Support Staff, performed routine management, cost/schedule control, invoicing, staffing, and reporting (MSR) activities.

Task 2 - Community Relations (CR)

- Public Relations Specialist and Support Staff assisted EPA in coordinating a public meeting in August on the OU-1 interim groundwater remedy and arranged for a translation.
- Contracting Specialist procured translation services.
- The SM attended the public meeting.

Task 3 - Field Investigation (FI)

- The SM coordinated, and the Task Manager and Project Scientist, with the help of Support Staff, performed field oversight of on-site soils investigation and groundwater sampling.

Task 5 - Analytical Support & Data Validation (AN)

- Sr. Chemist and a subcontractor validated analytical data and prepared validation reports.
- Contracting Specialist processed subcontractor invoice.
- Other Direct Costs on this task are \$1,093.75 for Temporary Help.

Task 6 - Data Evaluation (DE)

- The SM, Sr. Engineer, Hydrogeologist and Sr. Toxicologist reviewed PRPs' revised On-Site Soils Investigation Work Plan Addendum 2 and revised SSD Work Plan, and attended conference calls with EPA and OPOG on comment resolution.
- Task Manager and Database Specialist updated project database with CH2M HILL's and PRP's data.

Task 14 - Administrative Record (AR)

No Activity

Task 15 - Work Assignment Closeout (CO)

- A Contract Manager prepared team subcontractor tasking documents.

D. Activities Planned During Next Reporting Period

This section includes a description of activities planned on each task during the next reporting period.

Task 1 - Project Planning and Support (PP)

- Perform routine management and reporting.

Task 2 - Community Relations (CR)

- As directed by EPA.

Omega Chemical Corp. OU-1 - RI/FS Oversight*Period: 08/27/2005 through 09/30/2005***Task 3 - Field Investigation (FI)**

None

Task 5 - Analytical Support & Data Validation (AN)

None

Task 6 - Data Evaluation (DE)

None

Task 14 - Administrative Record (AR)

None

Task 15 - Work Assignment Closeout (CO)

None

E. Anticipated Changes

None

F. Variances - Contract Cost Adjustments

None

G. Problems and Recommended Solutions

This Work Assignment is now closed.

MONTHLY STATUS REPORT

Omega Chemical Corp. OU-1 - RI/FS Oversight

Period: 08/27/2005 through 09/30/2005

Work Assignment No.: 174-RSBD-09BC
CH2M HILL Project No.: 183120
Team Sub Project No.:

Project Officer: Linda Nanbu
Work Assignment Mgr.: Chris Lichens
Site Manager/Firm: Tom Perina/CH2M HILL

A. Expenditure Limit

2,629 (93.89%) of the LOE Expenditure Limit (2,800) and \$291,218.30 (95.48%) of the Dollar Expenditure Limit (\$305,000.00) has been expended.

B. Summary

CH2M HILL reviewed discharge permit requirements for the interim groundwater remedy and PRP's Work Plan for SSD. CH2M HILL participated in conference calls with EPA and OPOG to discuss planned activities and resolve comment issues. CH2M HILL performed field oversight of MIP soil investigation and SSD testing.

C. Activities Performed During Reporting Period

This section presents a description of activities performed on each task. *Note: Report 1 contains by task, names of staff, "P" levels, and number of hours worked for each individual.*

Task 1 - Project Planning and Support (PP)

- The SM with the help of Support Staff, performed routine management, cost/schedule control, invoicing, staffing, and reporting (MSR) activities.

Task 2 - Community Relations (CR)

- Public Relations Specialist processed invoice for translation services.
- Other Direct Costs on this task are \$570 for Court Reporter.

Task 3 - Field Investigation (FI)

- The SM coordinated, and the Task Manager and two Project Scientists, with the help of Support Staff, performed field oversight of on-site soils MIP investigation and SSD testing.
- Other Direct Costs on this task are \$9.41 for Equipment Consumable.

Task 5 - Analytical Support & Data Validation (AN)

- The SM coordinated the validation of EPA analytical data, and requested and received data from OPOG.

Task 6 - Data Evaluation (DE)

- The SM and Sr. Engineer researched permit requirements for treated groundwater discharge and potential off-gassing from the planned interim groundwater treatment system. The Los Angeles RWQCB and the South Coast AQMD were contacted.
- The SM and Sr. Engineer reviewed OPOG's revised SSD Work Plan and attended conference calls with EPA and OPOG.
- Database Specialist updated project database with CH2M HILL's and OPOG's data.

Task 14 - Administrative Record (AR)

No Activity

Task 15 - Work Assignment Closeout (CO)

- The SM prepared and the PM reviewed the WACR. The WACR was submitted to EPA.

D. Activities Planned During Next Reporting Period

This section includes a description of activities planned on each task during the next reporting period.

Task 1 - Project Planning and Support (PP)

None

Task 2 - Community Relations (CR)

None

Omega Chemical OU1 - RI/FS Oversight

Period: 10/01/2005 through 10/28/2005

E. Anticipated Changes

None

F. Variances - Contract Cost Adjustments

None

G. Problems and Recommended Solutions

None

MONTHLY STATUS REPORT

Omega Chemical OU1 - RI/FS Oversight

Period: 10/01/2005 through 10/28/2005

Work Assignment No.: 274-RSBD-09BC
CH2M HILL Project No.: 335391
Team Sub Project No.:

Project Officer: Linda Nanbu
Work Assignment Mgr.: Chris Lichens
Site Manager/Firm: Tom Perina/CH2M HILL

A. Expenditure Limit

72.4 (18.10%) of the LOE Expenditure Limit (400) and \$8,144.42 (20.11%) of the Dollar Expenditure Limit (\$40,500.00) has been expended.

B. Summary

Field oversight in October included groundwater and indoor air sampling. PRP air data and memoranda were reviewed. A memorandum on indoor air sampling was prepared. A cost estimate for an interim remedial measure was prepared.

C. Activities Performed During Reporting Period

This section presents a description of activities performed on each task. *Note: Report 1 contains by task, names of staff, "P" levels, and number of hours worked for each individual.*

Task 1 - Project Planning and Support (PP)

Subtask PP.01 (Project Planning)

No Activity.

Subtask PP.03 (Project Management)

- The SM performed routine management, cost/schedule control, invoicing, staffing, and reporting (MSR) activities.
- Project Accountant set up WA EL budgets.

Task 3 - Field Investigation (FI)

- The SM coordinated field oversight efforts.

Task 5 - Analytical Support & Data Validation (AN)

- The SM coordinated sample analysis with Region 9 Laboratory, data validation, and database corrections.
- Project Technician with the help of Support Staff corrected sample IDs and updated qualifiers.

Task 6 - Data Evaluation (DE)

- The SM reviewed PRP's indoor air and soil data, participated in conference calls, and prepared a technical rationale for the installation of a new deep well.
- A Database Specialist updated project database.

D. Activities Planned During Next Reporting Period

This section includes a description of activities planned on each task during the next reporting period.

Task 1 - Project Planning and Support (PP)

- Perform routine project management and reporting.

Task 3 - Field Investigation (FI)

- Oversight for additional soil investigation is expected.

Task 5 - Analytical Support & Data Validation (AN)

- The laboratory results for split samples will be validated when received from the lab.

Task 6 - Data Evaluation (DE)

- Prepare review comments on MIP and SSD memoranda.

Omega Chemical OU1 - RI/FS Oversight

Period: 10/29/2005 through 11/25/2005

E. Anticipated Changes

None

F. Variances - Contract Cost Adjustments

None

G. Problems and Recommended Solutions

None

MONTHLY STATUS REPORT

Omega Chemical OU1 - RI/FS Oversight

Period: 10/29/2005 through 11/25/2005

Work Assignment No.: 274-RSBD-09BC
CH2M HILL Project No.: 335391
Team Sub Project No.:

Project Officer: Linda Nanbu
Work Assignment Mgr.: Chris Lichens
Site Manager/Firm: Tom Perina/CH2M HILL

A. Expenditure Limit

224.7 (32.10%) of the LOE Expenditure Limit (700) and \$24,549.39 (27.13%) of the Dollar Expenditure Limit (\$90,500.00) has been expended.

B. Summary

Oversight in November included the review of PRP data and memoranda and the preparation of review comments. Summaries of the indoor air sampling results were also prepared.

C. Activities Performed During Reporting Period

This section presents a description of activities performed on each task. *Note: Report 1 contains by task, names of staff, "P" levels, and number of hours worked for each individual.*

Task 1 - Project Planning and Support (PP)

Subtask PP.01 (Project Planning)

No Activity.

Subtask PP.03 (Project Management)

- The SM performed routine management, cost/schedule control, invoicing, staffing, and reporting (MSR) activities.
- The Contract Administrator prepared team subcontractor tasking documents.

Task 3 - Field Investigation (FI)

- The SM coordinated field oversight efforts.

Task 5 - Analytical Support & Data Validation (AN)

- The SM coordinated sample analysis with Region 9 Laboratory, data validation, and database corrections.

Task 6 - Data Evaluation (DE)

- The SM and a Sr. Engineer reviewed PRP's indoor air and soil data, MIP and SSD memoranda, prepared review comments, and participated in conference calls.
- A Task Manager, Sr. Toxicologist, Database Specialist, and Project Technician prepared indoor air result summaries for September 2006 sampling.

D. Activities Planned During Next Reporting Period

This section includes a description of activities planned on each task during the next reporting period.

Task 1 - Project Planning and Support (PP)

- Perform routine project management and reporting.
- Prepare Work Plan documents for Option Period 2.

Task 3 - Field Investigation (FI)

- Oversight for additional soil investigation is expected in December and of groundwater sampling in February 2006.

Task 5 - Analytical Support & Data Validation (AN)

- The laboratory results for split samples will be validated when received from the lab.

Task 6 - Data Evaluation (DE)

- Prepare review comments on MIP and SSD memoranda.

Omega Chemical OU1 - RI/FS Oversight

Period: 11/26/2005 through 12/30/2005

Task 5 - Analytical Support & Data Validation (AN)

- The laboratory results for split samples will be validated when received from the lab.

Task 6 - Data Evaluation (DE)

- Prepare review comments on MIP and SSD memoranda and on Removal Action Plan.
- Attend a technical meeting with the PRPs in January.

E. Anticipated Changes

None

F. Variances - Contract Cost Adjustments

None

G. Problems and Recommended Solutions

None

MONTHLY STATUS REPORT

Omega Chemical OU1 - RI/FS Oversight

Period: 11/26/2005 through 12/30/2005

Work Assignment No.: 274-RSBD-09BC

CH2M HILL Project No.: 335391

Team Sub Project No.:

Project Officer: Linda Nanbu

Work Assignment Mgr.: Chris Lichens

Site Manager/Firm: Tom Perina/CH2M HILL

A. Expenditure Limit

308.4 (27.41%) of the LOE Expenditure Limit (1,125) and \$34,616.38 (26.53%) of the Dollar Expenditure Limit (\$130,500.00) has been expended.

B. Summary

Oversight in December included the review of PRP data and memoranda and the preparation of review comments. Summaries of the indoor air sampling results were also prepared. CH2M HILL assisted EPA in preparation of the Scope of Work for additional PRP activities.

C. Activities Performed During Reporting Period

This section presents a description of activities performed on each task. *Note: Report 1 contains by task, names of staff, "P" levels, and number of hours worked for each individual.*

Task 1 - Project Planning and Support (PP)

Subtask PP.01 (Project Planning)

No Activity.=

Subtask PP.03 (Project Management)

- The SM, with the help of support staff, performed routine management, cost/schedule control, invoicing, staffing, and reporting (MSR) activities.

Task 3 - Field Investigation (FI)

- The SM coordinated field oversight efforts.
- Task Manager conducted field oversight of on-site soil investigation.
- Database Technician copied and filed field notes and logs.
- NOTE: In December, the Task Manager inadvertently charged eight (8) hours to Task 3 under WA 275 instead of to Task 3 under WA 274, for field oversight. The transfer of eight (8) hours will be reflected in next month's invoice.

Task 5 - Analytical Support & Data Validation (AN)

- The SM coordinated sample analysis with Region 9 Laboratory, data validation, and database input.

Task 6 - Data Evaluation (DE)

- The SM and a Sr. Engineer reviewed PRP's soil data and revised SSD memorandum, prepared review comments, and participated in conference calls.
- The SM and a Sr. Engineer assisted EPA's WAM in preparation of a Scope of Work for the mitigation of indoor air contaminant vapor intrusion and on-site soils remediation by the PRPs.
- A Task Manager, Sr. Toxicologist, Database Specialist prepared, and the SM reviewed indoor air result summaries for September 2006 sampling.

D. Activities Planned During Next Reporting Period

This section includes a description of activities planned on each task during the next reporting period.

Task 1 - Project Planning and Support (PP)

- Perform routine project management and reporting.
- Prepare Work Plan documents.

Task 3 - Field Investigation (FI)

- Oversight for additional soil investigation is expected in February-March and of groundwater sampling in February 2006.
- Oversight of indoor air mitigation activities at Skateland is expected in March-May 2006.

Omega Chemical OU1 – RI/FS Oversight

Period: 12/31/2005 through 01/27/2006

D. Activities Planned During Next Reporting Period

This section includes a description of activities planned on each task during the next reporting period.

Task 1 - Project Planning and Support (PP)

- Perform routine project management and reporting.
- Prepare Work Plan documents.

Task 3 - Field Investigation (FI)

- Oversight for additional soil investigation is expected in February-April and of groundwater sampling in February 2006.
- Oversight of indoor air mitigation activities at Skateland is expected in March-May 2006.
- Oversight of additional deep groundwater monitoring well installation and groundwater extraction well installation is expected starting February 2006.
- Re-survey of deep groundwater monitoring wells in support of the new deep well installation is expected in February 2006.

Task 5 - Analytical Support & Data Validation (AN)

- The laboratory results for split samples will be validated when received from the lab.

Task 6 - Data Evaluation (DE)**Subtask DE.01 (Data Evaluation)**

- Prepare review comments on MIP memorandum and on Removal Action Plan.
- Evaluate groundwater flow direction in the deeper aquifer zone and the placement of the additional deep well installation.
- Attend conference call(s) with PRPs.

Subtask DE.02 (Indoor Air Evaluation)

- Prepare the evaluation of options for the mitigation of indoor air contaminant vapor intrusion at Skateland.

E. Anticipated Changes

None

F. Variances - Contract Cost Adjustments

None

G. Problems and Recommended Solutions

None

MONTHLY STATUS REPORT

Omega Chemical OU1 – RI/FS Oversight

Period: 12/31/2005 through 01/27/2006

Work Assignment No.: 274-RSBD-09BC
CH2M HILL Project No.: 335391
Team Sub Project No.:

Project Officer: Linda Nanbu
Work Assignment Mgr.: Chris Lichens
Site Manager/Firm: Tom Perina/CH2M HILL

A. Expenditure Limit

449.1 (39.92%) of the LOE Expenditure Limit (1,125) and \$51,700.78 (39.62%) of the Dollar Expenditure Limit (\$130,500.00) has been expended.

B. Summary

Oversight in January included the review of PRP data and documents and the preparation of review comments. CH2M HILL assisted EPA in preparation of the Scope of Work for additional PRP activities and evaluation of mitigation options for Skateland. CH2M HILL attended a meeting with the PRPs.

C. Activities Performed During Reporting Period

This section presents a description of activities performed on each task. *Note: Report 1 contains by task, names of staff, "P" levels, and number of hours worked for each individual.*

Task 1 - Project Planning and Support (PP)

Subtask PP.01 (Project Planning)

No Activity.

Subtask PP.02 (Work Plan)

- The Program Contract Administrator prepared WP budget table templates.

Subtask PP.03 (Project Management)

- The SM, with the help of support staff, performed routine management, cost/schedule control, invoicing, staffing, and reporting (Monthly Status Report) activities.

Task 3 - Field Investigation (FI)

- Database Technician prepared for first quarter 2006 groundwater sampling.
- NOTE: In December, the Task Manager inadvertently charged eight (8) hours to Task 3 under WA 275 instead of to Task 3 under WA 274, for field oversight. The transfer of eight (8) hours is reflected in this month's invoice.

Task 5 - Analytical Support & Data Validation (AN)

- The SM coordinated sample analysis request for first quarter 2006 groundwater split sampling with Region 9 Laboratory and data validation.

Task 6 - Data Evaluation (DE)

Subtask DE.01 (Data Evaluation)

- The SM, two Sr. Process Engineers, Sr. Electrical Engineer, and Sr. Structural Engineer reviewed PRP's Draft Removal Action Plan and prepared review comments.
- Sr. Engineer contacted the Regional Water Quality Control Board regarding discharge options for treated groundwater, specifically re-injection into the shallow aquifer.
- The SM and a Sr. Engineer assisted EPA's WAM in preparation of a Scope of Work for the mitigation of indoor air contaminant vapor intrusion and on-site soils remediation by the PRPs.
- The SM, Sr. Engineer, and Project Hydrogeologist reviewed PRP's memorandum on sub-slab depressurization testing dated December 16, 2005.
- The SM, two Sr. Engineers, Database Specialist, and Database Technician started the evaluation of options for the mitigation of indoor air contaminant vapor intrusion at Skateland.
- The SM and Sr. Engineer attended January 20, 2005 meeting with EPA, DTSC, and PRPs in Irvine.
- Contract Administrator prepared team subcontractor tasking documents.

Subtask DE.02 (Indoor Air Evaluation)

- Two Sr. Engineers prepared the evaluation of options for the mitigation of indoor air contaminant vapor intrusion at Skateland.

Omega Chemical OU1 – RI/FS Oversight

Period: 01/28/2006 through 02/24/2006

Subtask DE.02 (Indoor Air Evaluation)

- Three Sr. Engineers, Project Hydrogeologist, CAD Technician, and the SM prepared the evaluation of options for the mitigation of indoor air contaminant vapor intrusion at Skateland. Sr. Engineer reviewed the evaluation. The SM submitted the evaluation to EPA.
- The SM and two Sr. Engineers assisted EPA's WAM in preparation of a Scope of Work for the mitigation of indoor air contaminant vapor intrusion and on-site soils remediation by the PRPs.

D. Activities Planned During Next Reporting Period

This section includes a description of activities planned on each task during the next reporting period.

Task 1 - Project Planning and Support (PP)

- Perform routine project management and reporting.

Task 3 - Field Investigation (FI)

- Oversight for additional soil investigation is expected in March-April.
- Oversight of indoor air mitigation activities at Skateland is expected in 2006.
- Oversight of additional deep groundwater monitoring well installation and groundwater extraction well installation is expected in March 2006.

Task 5 - Analytical Support & Data Validation (AN)

- The laboratory results for split samples will be validated when received from the lab.

Task 6 - Data Evaluation (DE)**Subtask DE.01 (Data Evaluation)**

- Prepare review comments on PRP's documents, including soil investigation (MIP and VP) memorandum.
- Evaluate groundwater flow direction in the deeper aquifer zone and the placement of the additional deep well.
- Attend conference call(s) with PRPs.

Subtask DE.02 (Indoor Air Evaluation)

- Assist EPA in implementing the mitigation of indoor air contaminant vapor intrusion at Skateland.

E. Anticipated Changes

None

F. Variances - Contract Cost Adjustments

None

G. Problems and Recommended Solutions

Expenditures will reach 75% of ELs by late March 2006.

MONTHLY STATUS REPORT

Omega Chemical OU1 - RI/FS Oversight

Period: 01/28/2006 through 02/24/2006

Work Assignment No.: 274-RSBD-09BC

CH2M HILL Project No.: 335391

Team Sub Project No.:

Project Officer: Linda Nanbu

Work Assignment Mgr.: Chris Lichens

Site Manager/Firm: Tom Perina/CH2M HILL

A. Expenditure Limit

671.3 (59.67%) of the LOE Expenditure Limit (1,125) and \$75,724.89 (58.03%) of the Dollar Expenditure Limit (\$130,500.00) has been expended.

B. Summary

Oversight in February included the review of PRP data and documents and the preparation of review comments, split groundwater sampling, and survey of wells. CH2M HILL assisted EPA in preparation of the Scope of Work for additional PRP activities and evaluation of mitigation options for Skateland. CH2M HILL attended teleconferences with the PRPs. Project activities further included routine project management, staffing, and reporting.

C. Activities Performed During Reporting Period

This section presents a description of activities performed on each task. *Note: Report 1 contains by task, names of staff, "P" levels, and number of hours worked for each individual.*

Task 1 - Project Planning and Support (PP)

Subtask PP.01 (Project Planning)

No Activity

Subtask PP.02 (Work Plan)

- The SM prepared, and the Program Contract Administrator and PM reviewed WP budget tables.

Subtask PP.03 (Project Management)

- The SM, with the help of Support Staff, performed routine management, cost/schedule control, invoicing, staffing, and reporting (Monthly Status Report) activities.
- The SM addressed PRP's inquiry regarding EPA's oversight cost invoice.

Task 3 - Field Investigation (FI)

- Project Hydrogeologist performed first quarter 2006 groundwater split-sampling.
- Project Hydrogeologist obtained quotes from subcontractors and surveyed wells OW1B, OW4B, OW8B, and MW13 with a State certified surveyor.
- The TM prepared the request for laboratory services and coordinated field sampling.
- Project Hydrogeologist performed oversight of PRP's soil investigation.
- The SM communicated with PRPs and EPA, reviewed purchase order request for surveying, and coordinated field activities.
- Equipment Specialist provided sampling supplies.

Task 5 - Analytical Support & Data Validation (AN)

- The SM coordinated data validation.

Task 6 - Data Evaluation (DE)

Subtask DE.01 (Data Evaluation)

- Sr. Process Engineer reviewed PRP's soil analytical data.
- Sr. GIS Analyst reviewed survey of OU-1 and OU-2 wells screened in the deeper zone.
- Project Hydrogeologist evaluated the groundwater flow gradient in the deeper sand zone.
- Database Specialist updated the project database with new survey results.
- The SM and Project Hydrogeologist prepared review comments on the PRP's January 27, 2006 soil investigation technical memorandum.
- The SM participated in two conference calls, communicated with EPA and PRPs, and coordinated data evaluation activities.

Omega Chemical OU1 – RI/FS Oversight

Period: 02/25/2006 through 03/31/2006

D. Activities Planned During Next Reporting Period

This section includes a description of activities planned on each task during the next reporting period.

Task 1 - Project Planning and Support (PP)

- Perform routine project management and reporting.

Task 3 - Field Investigation (FI)

- Oversight of indoor air mitigation activities at Skateland is expected in 2006.
- Oversight of groundwater extraction and monitoring well (part of interim groundwater remedy) installation is expected in 2006.

Task 5 - Analytical Support & Data Validation (AN)

- The laboratory results for split samples will be validated when received from the lab.

Task 6 - Data Evaluation (DE)**Subtask DE.01 (Data Evaluation)**

- Prepare review comments on PRP's documents, including soil investigation (MIP and VP) memorandum anticipated in April.
- Evaluate groundwater flow direction in the deeper aquifer zone and the placement of the additional deep well.
- Attend conference call(s) with PRPs.

Subtask DE.02 (Indoor Air Evaluation)

- Assist EPA in implementing the mitigation of indoor air contaminant vapor intrusion at Skateland.

E. Anticipated Changes

None

F. Variances - Contract Cost Adjustments

None

G. Problems and Recommended Solutions

Expenditures will reach 75% of ELs by early April 2006.

MONTHLY STATUS REPORT

Omega Chemical OU1 – RI/FS Oversight

Period: 02/25/2006 through 03/31/2006

Work Assignment No.: 274-RSBD-09BC
CH2M HILL Project No.: 335391
Team Sub Project No.:

Project Officer: Linda Nanbu
Work Assignment Mgr.: Chris Lichens
Site Manager/Firm: Tom Perina/CH2M HILL

A. Expenditure Limit

807.3 (71.76%) of the LOE Expenditure Limit (1,125) and \$94,060.56 (72.08%) of the Dollar Expenditure Limit (\$130,500.00) has been expended.

B. Summary

Oversight in March included the review of PRP data and oversight of well installation. CH2M HILL assisted EPA in preparation of the Action Memorandum, and evaluation of soil gas and air data. CH2M HILL attended teleconferences with the PRPs. Project activities further included routine project management, staffing, and reporting.

C. Activities Performed During Reporting Period

This section presents a description of activities performed on each task. *Note: Report 1 contains by task, names of staff, "P" levels, and number of hours worked for each individual.*

Task 1 - Project Planning and Support (PP)

Subtask PP.01 (Project Planning)

No Activity

Subtask PP.02 (Work Plan)

No Activity

Subtask PP.03 (Project Management)

- The SM, with the help of the TM and Support Staff, performed routine management, cost/schedule control, invoicing, staffing, and reporting (Monthly Status Report) activities.
- The SM addressed PRP's inquiry regarding EPA's oversight cost invoice.

Task 3 - Field Investigation (FI)

- The SM performed one oversight visit for well OW3B installation, concurred with PRP's well design, and coordinated field activities.

Task 5 - Analytical Support & Data Validation (AN)

- Sr. Chemist communicated with Region IX regarding data validation.
- The TM and Project Hydrogeologist reviewed and updated database records.
- The SM coordinated data validation and database management.

Task 6 - Data Evaluation (DE)

Subtask DE.01 (Data Evaluation)

- Sr. Process Engineer reviewed PRP's soil analytical data.
- Project Hydrogeologist evaluated the groundwater flow gradient in the deeper sand zone using water level from the new well OW3B.
- Project Hydrogeologist and Database Specialist reviewed the project database, sorted and exported analytical results, and determined maximum detected concentrations at or near Skateland.
- The SM participated in two conference calls with PRPs on the soil investigation and response to comments on the RAP, communicated with EPA and PRPs, and coordinated data evaluation activities.
- NOTE: In March, the Project Hydrogeologist inadvertently charged forty two (42) hours to Task 6 under WA 274 instead of to Task 6 under WA 275, for the preparation of plume maps. The transfer of forty two (42) hours will be reflected in next month's invoice.

Subtask DE.02 (Indoor Air Evaluation)

- The SM reviewed EPA's Action Memorandum for the mitigation of indoor air contaminant vapor intrusion at Skateland and on-site soils remediation by the PRPs.
- The SM, TM, and Project Hydrogeologist assisted EPA's WAM in preparation of a contaminant summary for the Action Memorandum.

Omega Chemical OU1 – RI/FS Oversight

Period: 04/01/2006 through 04/28/2006

Task 3 - Field Investigation (FI)

- Oversight of soil investigation and indoor air sampling is expected in 2006.
- Oversight of groundwater extraction and monitoring well (part of interim groundwater remedy) installation is expected in 2006.

Task 5 - Analytical Support & Data Validation (AN)

- Laboratory results for split samples will be validated when received from the lab.

Task 6 - Data Evaluation (DE)**Subtask DE.01 (Data Evaluation)**

- Prepare review comments on PRP's documents, including soil investigation (MIP and VP) memorandum anticipated in May-June.
- Review and comment on OW3B sampling results.
- Review indoor air sampling results.
- Attend conference call(s) with PRPs.

Subtask DE.02 (Indoor Air Evaluation)

- Assist EPA in implementing the mitigation of indoor air contaminant vapor intrusion at Skateland.

E. Anticipated Changes

None

F. Variances - Contract Cost Adjustments

In accordance with Contract Clause G.1 - PAYMENT OF BASE FEE, a credit adjustment to the base fee amount invoiced to date is included in the April 2006 invoice to reconcile the ratio of LOE hours expended to the total LOE hours ordered in Option Period 2.

G. Problems and Recommended Solutions

Expenditures exceeded 75% of ELs. EL ceilings are expected to be reached in July 2006.

MONTHLY STATUS REPORT

Omega Chemical OU1 – RI/FS Oversight

Period: 04/01/2006 through 04/28/2006

Work Assignment No.: 274-RSBD-09BC

CH2M HILL Project No.: 335391

Team Sub Project No.:

Project Officer: Linda Nanbu

Work Assignment Mgr.: Chris Lichens

Site Manager/Firm: Tom Perina/CH2M HILL

A. Expenditure Limit

869.7 (77.31%) of the LOE Expenditure Limit (1,125) and \$100,910.66 (77.33%) of the Dollar Expenditure Limit (\$130,500.00) has been expended.

B. Summary

Oversight in April included the review of PRP data and soil investigation technical memorandum. CH2M HILL assisted EPA in evaluation of soil gas and air data. CH2M HILL attended teleconferences with the PRPs. Project activities further included routine project management, staffing, and reporting.

C. Activities Performed During Reporting Period

This section presents a description of activities performed on each task. *Note: Report 1 contains by task, names of staff, "P" levels, and number of hours worked for each individual.*

Task 1 - Project Planning And Support (PP)

Subtask PP.01 (Project Planning)

No Activity

Subtask PP.02 (Work Plan)

No Activity

Subtask PP.03 (Project Management)

- The SM, with the help of the TM and Support Staff, performed routine management, cost/schedule control, invoicing, staffing, and reporting (Monthly Status Report) activities.
- The Contract Administrator reviewed confidentiality agreement prepared by EPA.

Task 3 - Field Investigation (FI)

- The SM coordinated field activities.

Task 5 - Analytical Support & Data Validation (AN)

- The TM prepared project instructions for data management.
- The SM reviewed project instructions.

Task 6 - Data Evaluation (DE)

Subtask DE.01 (Data Evaluation)

- The TM and two Project Hydrogeologists performed soil gas data query for EPA (database management).
- Sr. Process Engineer reviewed HVAC standards for their applicability and provided remote oversight of Skateland SSD testing.
- The SM attended two conference calls with EPA and PRPs (April 17 and 24) and one teleconference with EPA (April 21).
- The SM and Project Hydrogeologist reviewed PRP's technical memorandum on vadose zone soil investigation results.
- NOTE: In March, the Project Hydrogeologist inadvertently charged forty two (42) hours to Task 6 under WA 274 instead of to Task 6 under WA 275, for the preparation of plume maps. The transfer of forty two (42) hours is reflected in this month's invoice.

Subtask DE.02 (Indoor Air Evaluation)

No Activity

D. Activities Planned During Next Reporting Period

This section includes a description of activities planned on each task during the next reporting period.

Task 1 - Project Planning and Support (PP)

- Perform routine project management and reporting.

Omega Chemical – Removal Oversight*Period: 04/01/2006 through 04/28/2006***Task 7 - Review of PRP (RQ)**

- As directed by EPA.

Task 8 - Removal Oversight (VO)

- Oversight of the groundwater treatment system installation is expected in 2006.
- Oversight of the Skateland mitigation system installation is expected in 2006.

E. Anticipated Changes

None

F. Variances - Contract Cost Adjustments

None

G. Problems and Recommended Solutions

None

MONTHLY STATUS REPORT

Omega Chemical – Removal Oversight

Period: 04/01/2006 through 04/28/2006

Work Assignment No.: 221-VOBB-09BC
CH2M HILL Project No.: 343754
Team Sub Project No.:

Project Officer: Linda Nanbu
Work Assignment Mgr.: Chris Lichens
Site Manager/Firm: Tom Perina/CH2M HILL

A. Expenditure Limit

36.7 (7.34%) of the LOE Expenditure Limit (500) and \$4,372.16 (8.74%) of the Dollar Expenditure Limit (\$50,000.00) has been expended.

B. Summary

Project activities in April included the preparation of the Work Plan, field oversight of SSD testing at Skateland, and routine project management, staffing, and reporting.

C. Activities Performed During Reporting Period

This section presents a description of activities performed on each task. *Note: Report 1 contains by task, names of staff, "P" levels, and number of hours worked for each individual.*

Task 1 - Project Planning and Support (PP)

Subtask PP.02 (Work Plan)

- The SM, with the help of support staff, prepared the WA Work Plan (WP).
- Contractor Administrator and PM reviewed the WP and submitted to EPA.

Subtask PP.03 (Project Management)

- Support staff set up the project on the program website and in the accounting system.

Task 3 - Field Investigation (FI)

- The TM reviewed SSD work plan, conducted field oversight of SSD testing at Skateland, and prepared a summary memo of the field activities.
- The SM coordinated oversight activities.

Task 5 - Analytical Support & Data Validation (AN)

No Activity

Task 6 - Data Evaluation (DE)

No Activity

Task 7 - Review of PRP (RQ)

No Activity

Task 8 - Removal Oversight (VO)

No Activity

D. Activities Planned During Next Reporting Period

This section includes a description of activities planned on each task during the next reporting period.

Task 1 - Project Planning and Support (PP)

- Perform routine project management and reporting.
- Negotiate the WP and revise, if necessary.

Task 3 - Field Investigation (FI)

- Oversight of indoor air mitigation activities at Skateland is expected in 2006.
- Oversight of groundwater extraction and monitoring well (part of interim groundwater remedy) installation is expected in June 2006.

Task 5 - Analytical Support & Data Validation (AN)

- Laboratory results for split samples will be validated when received from the lab.

Task 6 - Data Evaluation (DE)

- Attend conference call(s) with PRPs.

Exhibit 3

SEATTLE OFFICE
eighteenth floor
second & seneca building
1191 second avenue
seattle, washington 98101-2939
TEL 206 464 3939 FAX 206 464 0125

OTHER OFFICES
beijing, china
new york, new york
portland, oregon
washington, d.c.
GSBLAW.COM

G A R V E Y S C H U B E R T B A R E R

Please reply to LESLIE R. SCHENCK
lschenck@gsblaw.com TEL EXT 1487

January 8, 2007

VIA FACSIMILE, E-MAIL and U.S. MAIL

Mr. Bruce Gelber
Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Re: DJ #90-11-3-06529

Mr. Keith Takata
Director, Superfund Division
United States Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

Re: Notice of Dispute and Initiation of Dispute Resolution Process regarding
EPA Request for Reimbursement of Oversight Costs 2005-2006
Omega Chemical Corporation, CA Superfund Site 09BC

Dear Mssrs: Gelber and Takata:

This letter is written on behalf of the Omega Chemical Site PRP Organized Group ("OPOG") Steering Committee and is OPOG's Notice of Dispute to the Agency and the United States as required by paragraph 45 of the February 28, 2001 Consent Decree ("Consent Decree") pursuant to which work is being done at the Omega Chemical Corporation Superfund Site ("Site"). OPOG hereby initiates the Dispute Resolution Process as set forth in Section XIX of the Consent Decree. This Notice of Dispute relates to the United States' Request for Payment of EPA Oversight Costs related to the Omega Chemical Corporation, CA Superfund Site 09BC received December 11, 2006, specifically claiming \$363,831.77 in oversight charges due. Specifically, OPOG is disputing the CH2MHill charges in the amount of \$170,537.01 as no backup is provided to EPA allowing either EPA or OPOG to evaluate whether time is properly being charged to Contract Number 68-W9-8225.



Paragraph 44 of the Consent Decree requires OPOG to reimburse the United States for Oversight Costs incurred in connection with the Consent Decree and EPA is required under this section to provide OPOG with a Regionally Prepared Itemized Summary Report of those incurred costs.

Pursuant to the Consent Decree, Dispute Resolution is appropriately invoked if OPOG determines that the United States has included, among other things, costs in its bill which do not represent Oversight Costs as those are defined in the Consent Decree or if accounting errors can be demonstrated.

We are in receipt of EPA's Summary Report and although we appreciate the inclusion in this cost bill of CH2MHill's Monthly Status Reports ("MSR"), as we have noted before, the MSRs do not provide the appropriate level of documentation or detail to support Hill's charges. The generality of the MSR descriptions does not allow OPOG to determine if there are any accounting errors or whether time is being mistakenly billed to Contract 68-W9-8225. The fact that EPA is not provided with this information at all makes it all the more untenable for the EPA to continue to require OPOG to pay these invoices. EPA could easily resolve this by requiring Hill to provide the underlying time sheets and hourly information supporting these bills.

Hill's claimed costs have almost doubled from 2003 -2004 and now annually exceed \$170,000. Accordingly, Hill's charges appear to be unreasonably high and, without more substantive documentation from CH2MHill, as to the detailed activities each person engaged in, the dates they undertook such activities, the time each activity required, the number of employees asked to work on each activity, OPOG cannot evaluate the reasonableness of these charges, whether they were appropriately charged to the OU-1 contract, whether there may be accounting errors associated with the underlying bills or whether, ultimately the charges being forwarded to OPOG for payment are truly Oversight Costs as defined by the Consent Decree. EPA continues to ask OPOG to blindly pay EPA's oversight costs and to trust the agency and Hill even though EPA does not receive any backup support for these bills and has no incentive to do a detailed review since it does not have to pay Hill for these charges.

Hill cannot be allowed to avoid providing the basic information necessary to evaluate whether a bill is proper just because it is providing these services through a government contract. OPOG, as the party actually paying for these activities, has a right to review backup and support for these bills and has a vested interest in evaluating them in detail and is not being allowed to do so by the EPA or Hill. Without receiving meaningful and detailed information that reasonably allows OPOG to evaluate the oversight charges it alone is being asked to pay at this Site, OPOG cannot agree to pay these charges and disputes that they are in fact Oversight Charges as defined by the CD. The fact that EPA does not receive from Hill this type of supporting documentation for the Hill charges makes it even more important for OPOG to have an opportunity to review such documentation for accuracy in accounting and assure charges made to the OU-1 contract are properly made.

"OPOG believes that it is unreasonable and far below professional standards generally applicable to credentialed professionals (such as geologists or engineers) to fail to provide basic information describing the services provided, such as dates worked, the persons performing work, a description of



January 8, 2007

Page 3

the tasks provided, the charges for such tasks and itemized expenses. It is inconceivable such records are not maintained by Hill and thus they can be provided to OPOG."

As set forth again herein and in OPOG's prior challenges, EPA's and Hill's summary descriptions of the services performed for which reimbursement is sought by EPA continues to be inadequate to allow OPOG to determine whether these services are properly considered Oversight Costs under the Consent Decree. More detail is necessary and justified given the potential for confusion and errors due to the multiple tasks EPA is conducting or overseeing regarding this Site and the number of contracts Hill manages.

OPOG, therefore, continues to seek supporting documentation for the work being charged to this Site by Hill, in the form of time sheets or other documentation showing what work was actually done, who did the work, when the work was done, tasks performed, time spent and hourly rates. Without this documentation, OPOG cannot meaningfully evaluate whether these oversight charges submitted by Hill are properly deemed Oversight Costs as defined in the Consent Decree or whether these charges are correct from an accounting perspective. Therefore, pursuant to Section XIX of the Consent Decree, OPOG hereby initiates Dispute Resolution.

The Consent Decree requires that OPOG establish an escrow account funded with the \$170,537.01 representing the charges by Hill for 2005- 2006 for which we request supporting documentation. OPOG has established such an escrow account and will wire to EPA as requested the remainder of the oversight charges in the amount of \$193,294.76.

OPOG has invoked formal Dispute Resolution because EPA has not obtained from Hill proper documentation of its charges so that a meaningful analysis of whether they are Oversight Costs can be conducted by OPOG. *OPOG hopes to resolve this issue once and for all with EPA and if necessary plans to raise this issue with the EPA Inspector General in the event that EPA continues to allow Hill and its other contractors to charge oversight costs to OPOG without requiring backup for Hill's charges.*

Very truly yours,

Leslie R. Schenck

cc: Karl Fingerhood
Elaine Chan
Chris Lichens
Steve Berninger
Frederick K. Schauffler

Exhibit 4



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

January 25, 2007

Leslie R. Schenck
Omega Chemical Site PRP Organized Group
Garvey Schubert Barer
1191 Second Avenue
Seattle, WA 98101-2939

RE: EPA Request for Reimbursement of Oversight Costs 2005-2006
Omega Chemical Superfund Site (SSID 09BC)

Dear Ms. Schenck:

I am writing in response to your January 8, 2007 letter to Bruce Gelber of the U.S. Department of Justice (DOJ) and Keith Takata of the U.S. Environmental Protection Agency (EPA). In that letter, the Omega Chemical Site PRP Organized Group (OPOG) provided notice of dispute regarding EPA's November 28, 2006 letter requesting payment of the subject oversight costs. As communicated by EPA's Assistant Regional Counsel on January 12, 2007, EPA is treating your letter as initiation of informal, rather than formal, dispute resolution under the Partial Consent Decree with OPOG (Partial CD). Paragraph 55 provides that disputes arising under the Partial CD are subject first to informal negotiations. After the conclusion of the informal dispute period, OPOG has seven days to initiate formal dispute resolution pursuant to Paragraph 56.a of the Partial CD. Unless we hear otherwise from you, we will treat the informal dispute period as ending on January 28, 2007, after which OPOG can initiate formal dispute resolution if it so communicates. EPA, however, is willing to extend the informal dispute period, as explained in this letter.

The Partial CD (Paragraph 44) requires EPA to provide a "Regionally Prepared Itemized Summary Report which includes direct and indirect costs incurred by EPA and its contractors." EPA disagrees with your contention that the detailed descriptions of services provided by EPA and CH2M Hill (Hill) is inadequate under the Partial CD. The documentation EPA has provided, supporting reimbursement of the 2005-06 oversight costs, is consistent with the Partial CD and is of the specific type of documentation that has been upheld in numerous court cases.

Over the past four billing cycles, EPA has provided increasingly detailed information to OPOG in support of its requests for reimbursement. After not invoking the dispute resolution process for either of the first two billing cycles (i.e., 2001-02 and 2002-03), OPOG disputed EPA's 2003-04 oversight bill, requesting additional documentation regarding costs incurred by Hill. Although not required to do so, EPA provided a summary of the Monthly Status Reports (MSRs) prepared by Hill, as well as a copy of EPA's Statement of Work for Operable Unit One (OU-1), describing in detail the nature of support that Hill provides to EPA for OU-1 activities. After receiving the

additional documentation, OPOG paid the 2003-04 bill.

For the 2004-05 billing cycle, OPOG requested even more detailed information than for the previous cycle and disputed EPA's entire bill. After meeting with OPOG attorneys, EPA provided copies of three complete MSRs to resolve the dispute, and offered to provide MSRs for the additional months if OPOG desired. Based on its review of the complete MSRs, OPOG requested that EPA provide the narrative summary and "Report 1" from each MSR for the billing period. EPA complied with this request. As you are aware, the MSRs document the type of work performed by identified Hill employees, the amount of time spent on the work, and the hourly rates of these employees. With one exception, these MSRs provide all of the information that you requested in your letter; the MSRs do not identify the actual date on which the work was performed. They do, however, by their nature, identify the month in which the work was performed. OPOG paid the 2004-05 bill without requesting the additional complete MSRs.

For the 2005-06 oversight bill, OPOG has requested copies of Hill's time cards or equivalent documentation. OPOG may have a misconception about the type and amount of information on these time cards. The time cards document the number of hours each employee charges to a specific account number each day, and contain space for additional notes. Hill personnel are not required to make additional notes, but often do so, in order to facilitate completion of the MSRs. Thus, the time cards inherently provide less detailed descriptive information than the corresponding MSRs. To be sure that OPOG understands the information available from Hill's time cards, we have enclosed a sample time card for OPOG's review. For the reasons we have discussed in the past with OPOG, EPA is neither prepared nor required to provide Hill's time cards in connection with EPA's request for reimbursement of oversight costs.

The National Contingency Plan (NCP) requires that EPA "shall complete and maintain documentation to support all actions taken under the NCP and to form the basis for cost recovery. In general, documentation shall be *sufficient* to provide the source and circumstances of the release, the identity of responsible parties, the response action taken, *accurate* accounting of federal, state, or private party costs incurred for response actions, and impacts and potential impacts to the public health and welfare and the environment." 40 C.F.R. § 300.160(a)(1) (2006). (emphasis added).

Courts interpreting what is required under the NCP have repeatedly rejected the notion that documents beyond cost summaries must be provided for a full accounting. See, e.g., *United States v. W.R. Grace & Co.*, 429 F.3d 1224 (9th Cir. 2005), affirming 280 F. Supp. 2d 1149 (D. Mont. 2003); *United States v. Chapman*, 146 F.3d 1166, 1171-72 (9th Cir. 1998). Courts have not required the presence of any particular document or type of document in their analysis of cost documentation. They have merely required that the documentation be "adequate" or "sufficient" to support the cost claim. The same approach has been applied in numerous other circuits and district courts. See, e.g., *United States v. Chrysler Corp.*, 168 F. Supp. 2d 754, 769 (N.D. Ohio 2001) (holding that contractor's invoices, which broke down expenses into eight general categories such as labor, travel and subsistence, were sufficiently specific standing alone to meet

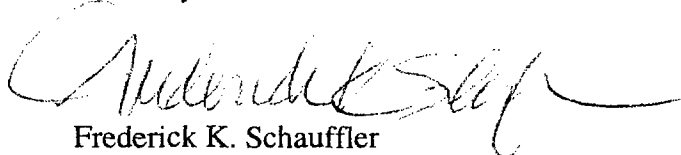
Ms. Leslie R. Schenck
January 25, 2007
Page 3

the requirements of 40 C.F.R. § 300.160(a)(1) of the NCP, in spite of contractor's failure to provide "project daily summaries, project daily details, reimbursable travel and subsistence logs, contractor personnel reports, equipment usage logs, and subcontractor reports"); *see also State v. Neville Chem. Co.*, 213 F. Supp. 2d 1134, 1139 (C.D.Cal. 2002) (rejecting the argument that a specific description of specifically what task an employee was engaged in at a particular time is required).

In summary, EPA strongly believes that the documentation already provided in support of our request for reimbursement of the 2005-06 oversight costs is adequate under the Partial CD, and is consistent with the documentation upheld in numerous court cases. Although EPA has not provided complete MSRs with its request for reimbursement of the 2005-06 oversight costs, EPA is willing to provide the Report 1 section from the MSRs upon OPOG's request, in order to resolve this dispute. We are also willing to extend the informal dispute period by 14 days, or until February 12, 2007, to allow OPOG additional time to evaluate its position regarding the additional documentation. If you desire this additional time, please let us know.

If you have any questions about this letter, please contact Steve Berninger, Assistant Regional Counsel (415-972-3909). We look forward to hearing from you.

Sincerely,



Frederick K. Schauffler
Chief, Site Cleanup Section 4
Superfund Division

Enclosure

cc: Steve Berninger
Chris Lichens
Elaine Chan
Karl Fingerhood, DOJ
Keith Millhouse, OPOG

19-JAN-2007 Timesheet for:

For this sheet -- Client: 103.13% -- BD: 0.00% -- Recovery: 0.00% -- Overhead: 0.00%

Show me this person's client ratio history

Row	Project Number	Description	Project Type	Total Hours	Sat.	Sun.	Mon.	Tue.	Wed.	Thu.	Fri.
1	PTO	PAID TIME OFF		8			8				
2	173165.DV.60.61.OM		CLIENT	3				1	1	1	
3	335366.RO.05	RA OVERSIGHT: AIRPORT	CLIENT	1							1
4	338464.RI.01	DETAILED RESIDENT IN	CLIENT	1							1
5	338464.PJ.02	SYSTEM PERFORMANCE	CLIENT	2							2
6	353060.10.06.05	OPS & MAINTENANCE	CLIENT	8				2	2	3	1
7	353071.10.06.05	OPS & MAINTENANCE	CLIENT	4				2	1	1	
8	353077.10.06.05	OPS & MAINTENANCE	CLIENT	8				2	2	2	2
9	353081.10.06.05	OPS & MAINTENANCE	CLIENT	6				2	2	1	1
Totals				41.0	0.0	0.0	8.0	9.0	8.0	8.0	8.0

Explanations for after-the-fact timesheet changes, additions, or deletions:

- Hour change from 0 to 1 hours on Tue made on Wed - Worked additional hours (row 2)
- Hour change from 0 to 1 hours on Thu made on Fri - Forgot to record time (row 2)
- Hour change from 0 to 2 hours on Thu made on Fri - Forgot to record time
- Hour change from 2 to 3 hours on Thu made on Fri - Forgot to record time (row 6)

Comments from this timesheet:

- Row 2, Tue - Edit tables for 2006 report.
- Row 2, Wed - Edit tables for 2006 report.
- Row 2, Thu - Work on annual, monthly discharge reports.
- Row 3, Fri - Conduct site visit for treatment plant construction.
- Row 4, Fri - Take photos of site resoration.
- Row 5, Fri - Download transducer data, pull transducer from WC-1.

Click [here](#) to close this window.

Exhibit 5

SEATTLE OFFICE
eighteenth floor
second & seneca building
1191 second avenue
seattle, washington 98101-2939
TEL 206 464 3939 FAX 206 464 0125

OTHER OFFICES
beijing, china
new york, new york
portland, oregon
washington, d.c.
GSBLAW.COM

G A R V E Y S C H U B E R T B A R E R

Please reply to LESLIE R. SCHENCK
lschenck@gsblaw.com TEL EXT 1487

March 12, 2007

VIA FACSIMILE, E-MAIL and U.S. MAIL

Mr. Bruce Gelber
Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Re: DJ #90-11-3-06529

Mr. Keith Takata
Director, Superfund Division
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

Re: Omega PRP Organized Group's ("OPOG") Statement of Position Regarding
Certain Oversight Costs

Dear Mssrs: Gelber and Takata:

Enclosed please find the above referenced document. Any questions or comments should be directed to me.

Very truly yours,



Leslie R. Schenck

cc: Karl Fingerhood
Elaine Chan
Chris Lichens
Steve Berninger
Frederick K. Schauffler

UNITED STATES OF AMERICA,

Plaintiff,

v.

ABEX AEROSPACE DIVISION and PNEUMO-
ABEX CORPORATION; AIR PRODUCTS AND
CHEMICALS, INC.; ALCOA INC.; ALLIED
SIGNAL, INC. (now known as HONEYWELL
INTERNATIONAL, INC.); ALPHA
THERAPEUTIC CORPORATION; APPLIED
MICRO CIRCUITS CORPORATION;
APPROPRIATE TECHNOLOGIES II, INC.;
ARLON ADHESIVES & FILM; ARMOR ALL
PRODUCTS CORPORATION; AVERY
DENNISON CORPORATION; BASF
CORPORATION; BAXTER HEALTHCARE
CORPORATION; BOEING NORTH AMERICA,
INC.; BONANZA ALUMINUM CORP.;
BORDEN, INC.; BOURNS, INC.; BROADWAY
STORES, INC.; CALIFORNIA DEPT. OF
TRANSPORTATION; CALSONIC CLIMATE
CONTROL, INC. (now known as CALSONIC
NORTH AMERICA, INC.); CANON BUSINESS
MACHINES, INC.; INTERNATIONAL PAPER
COMPANY; WASTE MANAGEMENT, INC.;
UNITED DOMINION INDUSTRIES; CITY OF
LOS ANGELES, DEPARTMENT OF
AIRPORTS; CITY OF SANTA MARIA;
COUNTY OF LOS ANGELES; CROSBY &
OVERTON, INC.; DATATRONICS
ROMOLAND, INC.; DEUTSCH ENGINEERED
CONNECTING DEVICES/DEUTSCH GAV;
DISNEYLAND CENTRAL PLANT; DOW
CHEMICAL COMPANY; FHL GROUP;
FIRMENICH INCORPORATED; FORENCO,
INC.; GAMBRO, INC.; GATX TERMINALS
CORPORATION; GENERAL DYNAMICS
CORPORATION; GEORGE INDUSTRIES;
GOLDEN WEST REFINING COMPANY;
GREAT WESTERN CHEMICAL COMPANY;
GSF ENERGY, L.L.C. (successor to GSF
ENERGY, INC.); GULFSTREAM AEROSPACE

Case No. 00-12741 CAS (Ctx)

Dispute Resolution Pursuant to Consent
Decree Paragraph 57

OMEGA PRP ORGANIZED GROUP's
("OPOG") STATEMENT OF
POSITION REGARDING CERTAIN
OVERSIGHT COSTS

CORPORATION; HEXEL CORPORATION;
HILTON HOTELS CORPORATION; HITACHI
HOME ELECTRONICS (AMERICA), INC.; BP
AMERICA, INC.; HONEYWELL
INTERNATIONAL INC.; HUBBEL INC.; HUCK
MANUFACTURING COMPANY (by its former
parent Federal Mogul Corporation); HUGHES
SPACE AND COMMUNICATIONS
COMPANY; HUNTINGTON PARK RUBBER
STAMP COMPANY; INTERNATIONAL
RECTIFIER CORPORATION; JAN-KENS
ENAMELING COMPANY; JOHNS MANVILLE
INTERNATIONAL, INC.; K.C. PHOTO
ENGRAVING CO.; KESTER SOLDER
DIVISION, LITTON SYSTEMS, INC.;
KIMBERLY CLARK WORLDWIDE, INC.;
KOLMAR LABORATORIES, INC.; LOS
ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY; LOMA
LINDA UNIVERSITY; BRITISH ALCAN
ALUMINUM, P.L.C.; MATTEL, INC.;
MAXWELL TECHNOLOGIES, INC.; THE MAY
DEPARTMENT STORES COMPANY;
McDONNELL DOUGLAS CORPORATION, a
wholly owned subsidiary of the BOEING
COMPANY; MEDEVA PHARMACEUTICALS
CA, INC. (f/k/a MD PHARMACEUTICAL INC.);
METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA; MICO INC.;
MINNESOTA MINING AND
MANUFACTURING COMPANY; QUALITY
CARRIERS INC. (f/k/a MONTGOMERY TANK
LINES, INC.); NI INDUSTRIES (a division of
TRIMAS, a wholly owned subsidiary of MASCO
TECH); NMB TECHNOLOGIES
CORP.; OHLINE CORP.; OJAI
MANUFACTURING TECHNOLOGY, INC.;
SIEMENS MEDICAL SYSTEMS, INC.;
PACIFIC BELL TELEPHONE COMPANY;
PACIFIC GAS & ELECTRIC CO.; PIONEER
VIDEO MANUFACTURING, INC.; PRINTED
CIRCUITS UNLIMITED; NELLCOR PURTIAN-
BENNETT; LONZA INC.; QUEST
DIAGNOSTICS CLINICAL LABORATORIES,
INC. (f/k/a BIO SCIENCE ENTERPRISES);

RATHON CORP. (f/k/a DIVERSEY CORP.);
RAYTHEON COMPANY; REGENTS OF THE
UNIVERSITY OF CALIFORNIA; REICHHOLD
INC.; REMET CORPORATION; RESINART
CORP.; ROBINSON PREZIOSO INC.; ROGERS
CORPORATION; SAFETY-KLEEN SYSTEMS,
INC. (f/k/a SAFETY-KLEEN CORP.); SCRIPTO-
TOKAI CORPORATION; SHELL OIL
COMPANY; THE SHERWIN-WILLIAMS
COMPANY; SIGMA CASTING
CORPORATION (now known as HOWMET
ALUMINUM CASTING, INC.); SIGNET
ARMORLITE, INC.; SOUTHERN CALIFORNIA
EDISON CO.; SOUTHERN PACIFIC
TRANSPORTATION CO. (now known as
UNION PACIFIC RAILROAD COMPANY);
HARSCO CORPORATION; BHP COATED
STEEL CORP.; TELEDYNE INDUSTRIES INC.;
TELEDYNE TECHNOLOGIES
INCORPORATED; TENSION ENVELOPE
CORP.; TEXACO INC.; TEXAS
INSTRUMENTS TUCSON CORPORATION
(f/k/a BURR-BROWN CORP.); TITAN
CORPORATION; TODD PACIFIC
SHIPYARDS; TREASURE CHEST; PACIFIC
PRECISION METALS, INC.; UNION OIL
COMPANY OF CALIFORNIA; UNITED
PARCEL SERVICE, INC.; UNIVERSAL CITY
STUDIOS, INC.; VAN WATERS & ROGERS
INC.; and VOPAK DISTRIBUTION AMERICAS
CORPORATION (f/k/a UNIVAR
CORPORATION); VERTEX MICROWAVE
PRODUCTS, INC. (f/k/a GAMMA-F CORP.);
WALT DISNEY PICTURES AND
TELEVISION; WARNER-LAMBERT
COMPANY; WEBER AIRCRAFT; WESTERN
METAL DECORATING CO.; YORK
INTERNATIONAL CORPORATION; YORT
INC. (f/k/a TROY LIGHTING, INC.-TIFFANY
DIVISION,

Defendant.

The Omega Chemical Site PRP Organized Group ("OPOG") hereby initiates Formal Dispute Resolution pursuant to Paragraph 57 as set forth in Section XIX of the February 28, 2001 Consent Decree ("Consent Decree") pursuant to which work is being done at the Omega Chemical Corporation Superfund Site ("Site"). OPOG initiated informal dispute resolution on January 8, 2007 which ended on March 5, 2007. This Statement of Position supports OPOG's initiation of Formal Dispute Resolution regarding this matter.

This dispute relates to the United States' Request for Payment of EPA Oversight Costs related to the Omega Chemical Corporation, CA Superfund Site 09BC received December 11, 2006, specifically claiming \$363,831.77 in oversight charges due from OPOG. Specifically, OPOG is disputing the CH2MHill ("Hill") charges in the amount of \$170,537.01 as no substantive backup for the Hill charges is provided to EPA or OPOG. Therefore, neither EPA nor OPOG can evaluate whether the Hill charges are properly being made to Contract Number 68-W9-8225. EPA and OPOG, therefore, cannot evaluate whether there are any accounting or other errors associated with the Hill charges.

The Consent Decree requires that OPOG establish an escrow account funded with the \$170,537.01 representing the charges by Hill for 2005- 2006 for which we request supporting documentation. OPOG established such an escrow account funded with \$170, 537.01 and wired to EPA the remainder of the oversight charges in the amount of \$193,294.76

Paragraph 44 of the Consent Decree requires OPOG to reimburse the United States for Oversight Costs incurred in connection with the Consent Decree and EPA is required under this section to provide OPOG with a Regionally Prepared Itemized Summary Report which includes direct and indirect costs incurred by EPA and its contractors and a DOJ prepared cost summary

which reflects costs incurred by DOJ and its contractors, if any, on a periodic basis. Pursuant to paragraph 45 of the Consent Decree, Dispute Resolution is appropriately invoked if OPOG determines that the United States has made an accounting error, a cost item is included which represents costs inconsistent with the NCP or that such costs are not Oversight Costs, as that term is defined by the Consent Decree.

Oversight costs mean all direct and indirect costs not inconsistent with the NCP, that the United States incurs in connection with the Work required by this Consent Decree, including costs incurred in reviewing or developing plans, reports and other items pursuant to the Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including but not limited to contractor costs, travel costs, laboratory costs, together with Interest as due.

The documentation EPA currently gathers from Hill in support of its charges does not provide the necessary level of detail such that either EPA or OPOG can evaluate whether Hill has made an accounting error, whether a cost item is consistent with the NCP or whether such costs are even Oversight costs as defined by the Consent Decree. The EPA receives Monthly Status Reports ("MSR") and certain other "Reports" that include summaries of charges and very brief and vague summaries of each month's work done by all Hill employees. This documentation, which Ms. Cox and Mr. Lichens have previously stated is the universe of documentation the EPA receives from Hill, was provided to OPOG for the 2004-2005 annual bill after OPOG representatives executed a Confidentiality Agreement with EPA. The MSRs and Reports do not provide the appropriate level of documentation or detail to allow OPOG to evaluate Hill's charges. The generality of the MSR and Report descriptions does not allow OPOG to determine if there are any accounting errors or whether time is being mistakenly billed

to Contract 68-W9-8225, the contract number assigned to the OPOG OU-1 Consent Decree work.

As stated above, EPA has confirmed that it does not collect or review "timesheets" from Hill. In a recent conversation with EPA's Steve Berninger, Elizabeth Cox, and Chris Lichens which was joined by Karl Fingerhood of the Department of Justice, EPA stated to OPOG representatives for the first time that EPA was uncertain as to what documentation Hill or its individual employees retained. By email dated February 12, 2007 from EPA's counsel, Steve Berninger, set forth the process Hill engages in prior to sending a bill to EPA for payment. EPA explained that Hill employees:

complete electronic timesheets on a weekly basis, which are reviewed and approved by that employee's supervisor, also on a weekly basis..... At the end of each billing cycle (i.e., the end of each month), preliminary invoice data are collected and are reviewed by a project accountant assigned to the contract. The data are uploaded to an internal contract website, organized by work assignment and task/subtask. The site manager is notified when the data are uploaded, who then reviews the charges. The contract administrator also reviews the data at this time. If any inaccurate or questionable charges are identified, appropriate measures are taken (e.g., data could be transferred to the correct project, if necessary, or held for further investigation).

When the data are ready for the final invoice, another notice is sent to the site manager, who again reviews the data, and prepares the monthly status report (MSR). In preparing the MSR, the site manager explains and incorporates all charges except those in the office staff and clerical categories. If mistakes are identified after the final invoice data is uploaded to the website, a notation is made in the MSR that the time/charges will be corrected/adjusted on the next invoice. (*emphasis added*)

It is OPOG's understanding, therefore, that Hill employees do in fact keep electronic timesheets, something OPOG has been requesting for years. Since such timesheets do exist and could easily be provided to OPOG, we again request that such timesheets be provided for our review. As we have in the past, we are willing to execute a reasonable Confidentiality

Agreement. EPA could easily and immediately resolve this matter by requiring Hill to provide to OPOG the underlying timesheets we now know exist for employees along with the hourly and cost information supporting these bills. This resolution would put this dispute regarding backup documentation to rest. To date however, EPA has continued to decline to provide such information. The fact that EPA is not, and has not been, provided with this information previously by Hill, makes it untenable for EPA to continue to require OPOG to pay these invoices without being provided all existing supporting documentation and allowing OPOG to do an independent review of the Hill charges.

Mr. Berninger's email also describes the Hill internal process for reviewing bills, however, it is unclear from the above description how Hill identifies "inaccurate or questionable charges" and what measures Hill takes to fix any problems it may find. It is also unclear what "further investigation" entails and who does such further investigation.

We understand that EPA relies upon Hill's Monthly Status Reports, Report I, Hill's internal QA/QC process, and Hill's "certification" of its bills but none of that allows EPA or OPOG to independently evaluate and analyze Hill's bills for errors. Additionally, although we understand that EPA project manager for this Site, Chris Lichens, reviews the Hill Status Reports and Report I and looks for egregious or other errors that can be ascertained from that documentation, neither Mr. Lichens nor EPA receives backup documentation or detailed timesheets necessary to evaluate whether there are accounting or other errors in the bills.

The MSRs are highly massaged documents provided by Hill to EPA which are then passed on to OPOG. The additional Report 1, while having a bit more detail including names of employees who work on the Contract as well as total dollars charged for that employee's work,

does not allow OPOG, or EPA for that matter, to engage in any detailed and independent review of Hill's charges. For instance if a Hill employee inadvertently charges time to OPOG that should have been appropriately charged to another site or to the McGraw Group, neither OPOG nor EPA has the necessary underlying timesheet details to detect and correct this error.

Thus, by agreeing to and defending this process, EPA essentially requires that both OPOG and EPA trust solely Hill's internal review processes for these bills, since it appears that there is absolutely no external oversight by EPA of the details of Hill's charges in the context of this Site. To make matters worse, EPA then requires that OPOG blindly pay the Hill bills, requiring that OPOG also rely completely on Hill's review of its own charges. This is not reasonable nor is it justifiable given Hill has much more information in the form of timesheets and hourly rate information that could easily be provided to OPOG for review.

OPOG is not requesting the EPA take on the task of reviewing backup documentation, but rather OPOG will review the documentation. OPOG merely seeks EPA's assistance in obtaining Hill's backup documentation in the form of time sheets and hourly rate and any other information it retains that support its bills so that OPOG can assure itself that the bills EPA passes on for payment by OPOG have been *independently* evaluated and reviewed, if not by the EPA, then at least by the PRP group paying the bills. As we have stated before, based upon the documentation EPA currently collects and then provides to OPOG, there is absolutely no way to determine if there are mistaken entries, accounting errors or other mistakes in the bills. Such errors could cumulatively, over the potentially long life of OPOG's involvement at this site, represent a significant amount of money.

OPOG believes it is unreasonable and not in compliance with professional standards

generally applicable to credentialed professionals (such as geologists or engineers) to fail to provide basic information describing the services provided, such as dates worked, the persons performing work, a description of the tasks provided, the charges associated with each task and itemized expenses. Given government contract auditing requirements, it is inconceivable that such records are not maintained by Hill. Thus they can be provided to OPOG.

OPOG reiterates that it is not, at this time, challenging the actual time Hill has charged to the Omega site as unnecessary or inconsistent with the NCP, although we reserve the right to do so if it appears Hill has overcharged OPOG or improperly billed for work unrelated to OU-1. OPOG's dispute is brought to assure that all charges are properly being made to OPOG as opposed to the McGraw Group, regional work or other unrelated sites.

EPA's letter of January 25, 2007 cited a number of NCP compliance cases. OPOG notes, however, that those cases are inapposite since each dealt with cost recovery by Agencies for remedial or removal work and addressed whether certain costs associated with those actions were consistent with the NCP. In at least one the cases cited by EPA, timesheets had in fact been provided to the PRPs being asked to pay costs of cleanup and the only matter at issue was whether the documented costs were consistent with the NCP. Additionally, none of the cases address the matter at issue here, e.g., whether it is appropriate to pass on to a PRP group conducting and paying for work at the Site pursuant to a Consent Decree, the EPA contractor's oversight costs incurred when EPA, the contracting agency, does not independently obtain or review all available contractor information to determine if accounting or other errors have been made.

Hill's claimed costs have almost doubled from 2003 -2004 and now annually exceed

\$170,000. Hill's charges appear to be unreasonably high and, without more substantive documentation from Hill, as to the detailed activities each person engaged in, the dates they undertook such activities, the time each activity required, the number of employees asked to work on each activity and their hourly rate, OPOG cannot evaluate the reasonableness of these charges, whether they were appropriately charged to the OU-1 contract, whether there may be accounting errors associated with the underlying charges by Hill or whether, ultimately the charges being forwarded to OPOG for payment are truly Oversight Costs as defined by the Consent Decree. EPA continues to require OPOG to blindly pay these oversight costs and to trust Hill even though EPA does not receive any backup support for these bills and has no incentive to do a detailed review since it does not have to pay Hill for these charges.

Hill cannot be allowed to avoid providing the basic information necessary to evaluate whether a bill is proper just because it is providing these services through a government contract and claims the timesheets and other information are confidential business information. OPOG, as the party actually paying for these activities, has a right, and an obligation to its member companies, to review backup and support for these bills. Additionally, because OPOG is required to pay these bills and EPA is not, OPOG has a vested interest in evaluating the documentation in detail and, as the entity paying these bills, should be provided with all documentation supporting these bills.

Accordingly, without supporting documentation in the form of time sheets with associated hourly rates and all other information retained by Hill, OPOG disputes that the Hill charges are in fact Oversight Costs as defined by the Consent Decree. The fact that EPA does not receive from Hill detailed supporting documentation for the Hill charges makes it even more important that OPOG to have an opportunity to review such documentation for accuracy in .

accounting and assure charges made to the OU-1 contract are properly made.

As set forth again herein and in OPOG's prior informal challenges, EPA's and Hill's highly massaged summary descriptions of the services performed for which reimbursement is sought by EPA continues to be inadequate to allow OPOG to determine whether these services are properly considered Oversight Costs under the Consent Decree. OPOG, therefore, disputes the Hill charges because they are not supported by documentation setting forth the work being done and the charges associated with this work, in the form of timesheets or other documentation showing the detailed descriptions of the work done, who did the work, when the work was done, tasks performed, time spent and hourly rates. Since EPA does not review this information, there is no independent oversight of Hill's charges. Since OPOG pays these invoices, OPOG should be provided with all documentation supporting these invoices and without this, OPOG cannot meaningfully evaluate whether the charges submitted by Hill to EPA for payment by OPOG are properly deemed "Oversight Costs" as defined in the Consent Decree or whether these charges are correct from an accounting perspective. Therefore, pursuant to Section XIX of the Consent Decree, OPOG initiates Formal Dispute resolution under Paragraph 57 of the Consent Decree and requests the EPA to direct Hill to provide all supporting documentation as described herein to OPOG for its review.

DATED this 12th day of March, 2007.

GARVEY SCHUBERT BARER



By 
Leslie R. Schenck
OPOG Representative

Exhibit 6

Stephen
Berninger/R9/USEPA/US
02/12/2007 05:06 PM

To Leslie Schenck <lschenck@gsblaw.com>
cc kmillhouse@mlglaw.net
bcc Christopher Lichens/R9/USEPA/US@EPA; Frederick
Schauffler/R9/USEPA/US@EPA; Elizabeth
Cox/R9/USEPA/US@EPA
Subject Re: Omega Site - OPOG Cost Challenge - extension of
informal dispute resolution period 

Leslie,

This responds to your February 6 email, in which you requested additional information regarding the process that oversight bills go through at EPA and CH2M Hill (Hill) prior to being sent to OPOG for reimbursement, including details of Hill's QA/QC process.

For information regarding the processing of bills at EPA, please refer to the letter from Fred Schauffler, Section Chief, to Chuck McLaughlin, dated April 13, 2005, a copy of which I've attached to this email. We believe that that letter adequately summarizes the process that occurs at EPA.

A brief summary of the process at Hill follows. Employees complete electronic timesheets on a weekly basis, which are reviewed and approved by that employee's supervisor, also on a weekly basis. We provided a copy of one of Hill's electronic timesheets with our January 25, 2007 letter to you.

At the end of each billing cycle (i.e., the end of each month), preliminary invoice data are collected and are reviewed by a project accountant assigned to the contract. The data are uploaded to an internal contract website, organized by work assignment and task/subtask. The site manager is notified when the data are uploaded, who then reviews the charges. The contract administrator also reviews the data at this time. If any inaccurate or questionable charges are identified, appropriate measures are taken (e.g., data could be transferred to the correct project, if necessary, or held for further investigation).

When the data are ready for the final invoice, another notice is sent to the site manager, who again reviews the data, and prepares the monthly status report (MSR). In preparing the MSR, the site manager explains and incorporates all charges except those in the office staff and clerical categories. If mistakes are identified after the final invoice data is uploaded to the website, a notation is made in the MSR that the time/charges will be corrected/adjusted on the next invoice.

I hope you find this synopsis responsive to your questions.

Best regards,

Steve



LettertoChuckMcLaughlin41305.pdf

Leslie Schenck <lschenck@gsblaw.com>



Leslie Schenck
<lschenck@gsblaw.com>
02/06/2007 10:20 AM

To Stephen Berninger/R9/USEPA/US@EPA
cc kmillhouse@mlglaw.net
Subject Omega Site - OPOG Cost Challenge - extension of informal dispute resolution period

Steve:

Thanks for speaking with Keith and I yesterday. We appreciated that Chris Lichens, Thanne Cox and Karl Fingerhood also joined the discussion.

As we agreed on the call, EPA and OPOG have extended the informal negotiation period to and including February 26, 2007. Additionally, I requested that EPA provide me with "Report 1" supporting documentation from CH2MHill for the entire 2005-2006 period for which we are currently engaged in informal dispute resolution. I understand that EPA will require a new confidentiality agreement to be entered. If you will send that to me I will execute and return to you.

Based upon our conversation yesterday it is our understanding that EPA does not collect or review "time sheets" from Hill and EPA is uncertain as to what documentation Hill or its individual employees may retain regarding their time entries. Keith and I pointed out that OPOG is unable, based upon the documentation EPA currently collects and then provides to us, to determine if there are mistaken entries or accounting errors or other mistakes in the bills that could cumulatively, over the potentially long life of OPOG's involvement at this site, represent a significant amount of money. We understand that EPA relies upon Hill's Monthly Status Reports, Report I, Hill's internal QA/QC process, and Hill's "certification" of its bills. Additionally, we understand that Chris Lichens reviews the Hill Status Reports and Report I and looks for egregious or other errors that can be ascertained from that documentation. If I have misstated any part of the process please advise. We really are just trying to understand what process the bills go through at Hill and EPA prior to being sent to OPOG for reimbursement. To that end, it would be helpful if you could get us the details of Hill's QA/QC process, given you and Thanne were unsure yesterday, and what it is that Hill is certifying in the "certification" you stated they provide.

Keith and I pointed out that the documentation provided to EPA and then to OPOG does not allow us, or EPA for that matter, to engage in any detailed and independent review of Hill's charges that are ultimately passed on by EPA to OPOG for payment. For instance if a Hill employee inadvertently charges time to OPOG that should have been appropriately charged to another site or to the McGraw Group, neither OPOG nor

EPA has the necessary underlying time details to detect and correct this error.

We reiterated that we are not at this time challenging the actual time Hill has charged to the Omega site, although we reserve the right to do that if it appears they have overcharged OPOG or improperly billed us for work unrelated to the Omega site or OPOG's alleged obligations. We are merely trying to assure with this dispute that all charges are properly being made to OPOG as opposed to the McGraw Group, regional work or other unrelated sites. Without the backup detail we requested yesterday and in previous discussions and letters we remain unable to engage in any independent evaluation of the bills we are being asked to pay.

As we discussed yesterday, Keith and I will raise this with the OPOG Steering Committee and get back to you. Again, thank you for your time and attention to this matter.

Regards,

Leslie R. Schenck

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DIRECT 206 816 1487 FAX 206 464 0125



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

SENT VIA OVERNIGHT MAIL

April 13, 2005

Chuck R. McLaughlin
Omega Chemical Site PRP Organized Group
Building 200; Suite 253
5225 Canyon Crest Drive
Riverside, CA 92507

RE: EPA Request for Reimbursement of Oversight Costs 2003-2004
Omega Chemical Superfund Site (SSID 09BC)

Dear Mr. McLaughlin:

I am writing in response to your letter of March 23, 2005 to Bruce Gelber of the U.S. Department of Justice and Keith Takata of the U.S. Environmental Protection Agency (EPA). In that letter, you initiated the Dispute Resolution Process on behalf of the Omega Chemical Site PRP Organized Group (OPOG) Steering Committee with respect to EPA's October 2004 request for payment of oversight costs and specifically with respect to the charges by EPA's contractor CH2M Hill. In your letter, you request additional documentation regarding CH2M Hill costs incurred by EPA in connection with the Omega Chemical Superfund Site in Whittier, CA, claiming that such information is necessary to determine whether the billed costs are properly considered Oversight Costs under the Partial Consent Decree.

As stated in my March 14, 2005 letter to you, EPA believes that it has already satisfied the requirements contained in the Consent Decree for documenting its oversight costs. However, in an effort to avoid formal dispute resolution, EPA again reviewed the costs incurred for the CH2M Hill services in question and is providing the additional information described below to address your concern as to whether these are properly considered Oversight Costs.

In my February 22, 2005, letter to you regarding OPOG's questions on the October 2004 oversight bill, I explained that the CH2M Hill costs on this bill are for services related to oversight of OPOG's work on Operable Unit 1 (OU-1, equivalent to the Phase 1a Area defined in the Consent Decree). CH2M Hill performs this work under EPA Contract #68-W9-8225 pursuant to Work Assignment (WA) #174-RSBD-09BC, and I am enclosing a copy of EPA's Statement of Work (SOW) for WA #174, which describes the nature of the support that Hill provides to EPA for OU-1 activities. The work CH2M Hill performs for EPA on the remainder of the site, including work on the OU-2 investigation and oversight of the work being performed by OSVOG (i.e., what you refer to as the McGaw Group), is billed to a separate work assignment (WA #175).

Mr. Chuck McLaughlin
April 13, 2005
Page 2

For each Work Assignment, CH2M Hill each month submits to EPA a Monthly Status Report (MSR) summarizing, by task, the work performed and the costs incurred during the month. The MSR is accompanied by the associated monthly invoice for the Work Assignment. As described below, these MSRs and associated invoices are reviewed by EPA to insure, among other things, that the work performed and costs incurred for each work assignment (including the personnel involved and the hours billed) are appropriate and consistent with SOW for the work assignment. Enclosed with this letter are selected pages from each of the MSRs for the period covered by EPA's October 2004 request for payment. Some of these pages have been redacted to protect the contractor's confidential business information.

Before submitting the MSR each month, the CH2M Hill Site Manager reviews all costs incurred to ensure that they are accurate and appropriate for the work assignment. At EPA, the Remedial Project Manager (RPM, in this case Chris Lichens) also reviews the MSR, including cost information, before approving the monthly invoice for the work assignment. At the end of the billing period, EPA accounting personnel compile the financial cost summary (i.e., the Itemized Cost Summary) for OU-1 based on, among other things, the invoices submitted by contractors such as CH2M Hill, and they reconcile the cost summary with the EPA accounting system. The reconciled cost summary is then forwarded to EPA Region 9 Superfund Division's cost recovery group for a page-by-page review to verify that the information is consistent with the costs and services described in the work-performed documentation (which in the case of CH2M Hill includes documents such as the SOW and the MSRs). The RPM and the site attorney also review the cost summary to ensure that it contains the appropriate site and (in this case) operable unit costs.

In preparing the cost package for the October 2004 billing, we identified the fact that CH2M Hill services to set up a February 2004 public meeting on the *de minimis* settlement had been incorrectly billed to WA #174 instead of WA #175. These costs were all associated with Task 2, "Community Relations" (abbreviated as "CR" on some of the enclosed MSR pages, particularly the summary of Current Month costs by task). We took steps to address this error at the time we prepared the original OPOG bill by deducting the costs for that task from the monthly CH2M Hill invoices and making the corresponding adjustment in the Annual Allocation costs for CH2M Hill (see the table below). In reviewing the CH2M Hill MSRs and invoices for the purpose of preparing this letter, we determined that the CR costs for invoices #93, 96 and 105 had not been deducted, and we have proceeded to make those corrections, which result in a credit to OPOG of \$1,554.39 (including the reduced Annual Allocation amount). The revised total cost for the services of CH2M Hill is \$77,660.27 (see the enclosed itemized cost summary dated 4/12/2005). We have confirmed with CH2M Hill's Site Manager that all other costs for services performed in conjunction with OU-2, oversight of OSVOG's work and the *de minimis* settlement have been and continue to be billed to WA #175.

MSR Period	Invoice Number	Total Amount Invoiced by CH2M Hill	Task 2 Costs Deducted	Amounts Billed to OPOG	
				Net Invoice	Annual Allocation Costs
7/26/03-8/29/03	93	\$3,391.70	\$1,332.58	\$2,059.12	\$88.65
8/30/03-9/26/03	96	\$10,843.20	\$7.06	\$10,836.14	\$466.54
9/27/03-10/31/03	101	\$25,739.58	\$0.00	\$25,739.58	\$728.69
11/1/03-11/28/03	105	\$7,289.83	\$152.74	\$7,137.09	\$202.05
11/29/03-12/26/03	107	\$1,906.47	\$0.00	\$1,906.47	\$53.97
12/27/03-1/30/04	109	\$6,572.14	\$40.17	\$6,531.97	\$184.92
1/31/04-2/27/04	111	\$5,533.21	\$1,466.62	\$4,066.59	\$115.13
2/28/04-3/26/04	113	\$5,773.61	\$1,395.44	\$4,378.17	\$123.95
3/27/04-4/30/04	116	\$12,876.80	\$194.60	\$12,682.20	\$359.04
Totals		\$79,926.54	\$4,589.21	\$75,337.33	\$2,322.93

There is one final comment I would like to pass along regarding the MSRs. If you look at the MSR for the period 7/26/03-8/29/03, you will note in Section C (Activities Performed During the Reporting Period) that the description of Community Relations services (Task 2) refers to a charge of \$4,810.85 for "Reprographics." This charge was erroneously listed in the narrative summary of this MSR, as the charge itself is not related to the Omega Chemical site and was never billed to EPA or to OPOG.

EPA believes that the information we are providing with this letter, along with the information previously provided, is sufficient for OPOG to determine that the CH2M Hill costs currently included in our bill are in fact proper Oversight Costs as defined in the Consent Decree. Per the conversation between Thanne Cox and Leslie Schenck, EPA and OPOG have mutually agreed to extend the period for informal dispute by fifteen (15) days, i.e., to COB on April 27, 2005.

Mr. Chuck McLaughlin
April 13, 2005
Page 4

If you have any questions regarding the above, please feel free to contact me at (415) 972-3174.

Sincerely,

A handwritten signature in dark ink, appearing to read "Frederick K. Schauffler", written in a cursive style.

Frederick K. Schauffler
Chief, Site Cleanup Section 4

Enclosures

cc: Leslie R. Schenck
Thanne Cox
Chris Lichens
Elaine Chan
Karl Fingerhood, DOJ

Exhibit 7

FILED

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SEP 7 7 09 AM '00

CLERK, U.S. DIST. COURT
EASTERN DISTRICT OF CALIFORNIA
BY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Plaintiff,

v.

ATLAS CORPORATION, and VINNELL
MINING AND MINERALS CORPORATION,

Defendants.

CIV F 92-5373 ONW

MEMORANDUM OPINION AND
ORDER RE:

(1) DEFENDANTS'
SUPPLEMENTAL BRIEFING ON
EFFECT OF THE STATE OF
CALIFORNIA'S RELEASE OF
CLAIMS AGAINST DEFENDANT
(DOC. 56);
(2) UNITED STATES'
CLARIFICATION OF THE RECORD
(DOC. 57);
(3) UNITED STATES'
SUBMITTAL PURSUANT TO THE
COURT'S JANUARY 12, 2000
MEMORANDUM OPINION AND
ORDER (DOC. 58); AND
(4) UNITED STATES' MOTION
FOR AN ORDER TO ENFORCE THE
COURT'S ORDER OF 1/12/00
AND TO IMPOSE STIPULATED
PENALTIES (DOC. 72)

Before the court are four motions: (1) Defendants'
Supplemental Briefing on Effect of the State of California's
Release of Claims Against Defendant (Doc. 56) filed January 28,
2000; (2) United States' Clarification of the Record (Doc. 57)
filed February 2, 2000; (3) United States' Submittal Pursuant to

82

1 the Court's January 12, 2000 Memorandum Opinion and Order (Doc.
2 58) filed February 2, 2000; and (4) United States' Motion for an
3 Order to Enforce the Court's Order of 1/12/00 and to Impose
4 Stipulated Penalties (Doc. 72) filed April 3, 2000. Each party
5 responded to the other's motion, and the moving party for each
6 motion filed a reply in support of its motion. In the case of
7 the Motion to Enforce the Court's January 12, 2000 Order,
8 Defendants filed a sur-reply, and the United States filed a reply
9 to this sur-reply.

10 11 I. BACKGROUND

12 This CERCLA action was brought against Atlas Corporation
13 (currently in bankruptcy) and Vinnell Mining and Minerals
14 Corporation (now part of TRW, Inc., hereinafter "TRW")
15 (collectively "Defendants") for recovery of costs incurred at the
16 Atlas Mine Area Operable Unit ("AMAOU"), part of the Atlas
17 Asbestos Mine Superfund Site ("the Site"). The parties entered
18 into a Consent Decree, however a dispute arose over certain cost
19 recovery items. A Memorandum Opinion and Order was issued
20 January 12, 2000 which addressed the majority of these disputes.
21 (See Memorandum Opinion and Order dated January 12, 2000 (Doc.
22 55).)

23 Two issues were left open by the January 12, 2000 Memorandum
24 Opinion: (1) whether a settlement between TRW and the State of
25 California DTSC eliminated TRW's obligation to repay \$12,053.68,
26 which the EPA incurred as part of a state cooperative agreement
27 (see Doc. 55 at 42-44); and (2) whether EPA provided adequate
28 documentation for \$66,908.72 of Alternative Remedial Contract

1 Support (ARCS) Ecology & Environment Bills (see *id.* at 34-36).
2 These issues are addressed by TRW's Supplemental Briefing on
3 Effect of the State of California's Release of Claims Against
4 Defendant (Doc. 56) ("Sett. Br.") and by the United States'
5 Submittal Pursuant to the Court's January 12, 2000 Memorandum
6 Opinion and Order (Doc. 58) ("USA Subm."), respectively.

7 The next motion, the United States' "Clarification of the
8 Record" filed February 2, 2000, seeks to inform the Court of "two
9 matters which warrant clarification." (See Clarification of the
10 Record (Doc. 57) at 1.) These two matters appear to be (1) the
11 court's analysis and use of the *United States v. Chromalloy*
12 *American Corporation* case; and (2) whether response costs can
13 ever be inconsistent with the NCP. The United States'
14 clarification motion is treated as a motion for reconsideration
15 of the January 12, 2000 Order.

16 The last motion, filed by the United States, seeks to
17 enforce the January 12, 2000 Order against TRW with respect to
18 the issues decided therein. This motion also seeks to impose
19 upon TRW stipulated penalties for noncompliance with the Consent
20 Decree, as provided for by the Consent Decree.

21 22 II. LEGAL STANDARD

23 A. COST DISPUTES LEFT OVER FROM JANUARY 12, 2000 ORDER

24 The dispute centers on interpretation of the Consent Decree. A
25 consent decree is essentially a contract. *Rufo v. Inmates of*
26 *Suffolk Jail*, 112, S. ct. 748, 757 (1992). Its scope must be
27 determined within its four corners, not by reference to "what
28 might satisfy the purposes of one of the parties to it" nor what

1 "might have been written had [a party] established his factual
2 claims and legal theories in litigation." *United States v.*
3 *Armour & Co.*, 402 U.S. 673, 682, 91 S. Ct. 1752, 1757, 29 L. Ed.
4 2d 256 (1971). "[F]undamental principles of contract
5 interpretation . . . apply when a court is presented with the
6 task of interpreting the provisions of a consent decree." *United*
7 *States v. City of Northlake*, 942 F.2d 1164, 1167 (7th Cir. 1991).
8 A court first looks to the language of the consent decree and, if
9 it is unambiguous, applies the plain meaning of its terms. If
10 the language is ambiguous, then the court may consider other
11 extrinsic evidence as to the parties' intention. *Id.*

12 The Consent Decree specifies the applicable standard of
13 proof, depending upon the nature of the dispute. For disputes
14 involving 42 U.S.C. § 9613(j)(2) (the selection of response
15 action), the court must uphold EPA's decision unless Defendants
16 can show it was arbitrary and capricious or otherwise not in
17 accordance with law. Consent Decree, § XXIII.C.2. For any other
18 disputes, the court applies "applicable standards of law
19 regarding standard of review." *Id.* Because this is a civil
20 case, Defendants' burden of proof is by a preponderance of the
21 evidence.

22 The Consent Decree places the burden of going forward with
23 evidence and the risk of non-persuasion on Defendants. Consent
24 Decree, § XXIII.C.2. If Defendants fail to satisfy their burden,
25 then Defendants must pay and follow the court's order (Consent
26 Decree, § XXIII.C.3) but if they prevail, "the deadlines for any
27 affected deliverables shall be extended to account for any delays
28 attributable to the dispute resolution process." Consent Decree,

1 § XXIII.C.4. The United States may rebut any evidence offered by
2 Defendants. See Fed. R. Evid. 301 ("In all civil actions . . .
3 not otherwise provided for by Act of Congress . . . a presumption
4 imposes on the party against whom it is directed the burden of
5 going forward with evidence to rebut or meet the presumption, but
6 does not shift to such party the burden of proof in the sense of
7 the risk of nonpersuasion"); see also 42 U.S.C. § 9622(m)
8 ("In the case of consent decrees . . . no provision of this
9 chapter shall be construed to preclude or otherwise effect the
10 applicability of general principles of law regarding the setting
11 aside or modification of consent decrees")

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B. MOTION FOR RECONSIDERATION

Rule 60(b) permits reconsideration of an order of the district court on grounds of: 1) mistake, inadvertence, surprise, or excusable neglect; 2) newly discovered evidence that supports grounds for a new trial under Rule 59; 3) fraud of an adverse party; 4) judgment is void; 5) judgment has been satisfied, released or discharged; or 6) any other reason justifying relief from the operation of the judgment. Fed. R. Civ. P. 60(b).

Rule 60 reconsideration is generally appropriate in three instances: 1) when there has been an intervening change of controlling law, 2) new evidence has come to light, or 3) when necessary to correct a clear error or prevent manifest injustice. *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir.), cert. denied, 512 U.S. 1236, 114 S. Ct. 2742, 129 L. Ed. 2d 861 (1994); see also L.R. 78-230(k), Local Rules of the

1 Eastern District.¹ "A motion for reconsideration is not a
2 vehicle to reargue a motion or to present evidence which should
3 have been raised before." *Birmingham v. Sony Corp. of America*,
4 820 F. Supp. 834, 856 (D.N.J. 1992), *aff'd*, 37 F.3d 1485 (3rd
5 Cir. 1994). "A party seeking reconsideration must show more than
6 a disagreement with the Court's decision. . . . [R]ecapitulation
7 of the cases and arguments considered by the Court before
8 rendering its original decision fails to carry the moving party's
9 burden." *Id.* To succeed, a party must set forth facts or law of
10 a strongly convincing nature to induce the court to reverse its
11 prior decision. *See, e.g., Kern-Tulare Water Dist. v. City of*
12 *Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986), *aff'd in*
13 *part and rev'd in part on other grounds*, 828 F.2d 514 (9th Cir.
14 1987), *cert. denied*, 486 U.S. 1015, 108 S. Ct. 1752, 100 L. Ed.
15 2d 214 (1988).

16 "Clause 60(b)(6) is residual and must be read as being
17 exclusive of the preceding clauses." *LaFarge Conseils et Etudes*,
18 *S.A. v. Kaiser Cement*, 791 F.2d 1334, 1338 (9th Cir. 1986)
19 (internal quotations and citations omitted). Rule 60(b)(6) "is
20 reserved for 'extraordinary circumstances.'" *Id.*

21
22 ¹ Local Rule 78-230(k) permits reconsideration of:

23 any motion [that] has been granted or denied in whole or in
24 part, . . . [upon motion] setting forth the material facts
25 and circumstances surrounding each motion for which
reconsideration is sought, including:

26 (1) when and to what Judge the prior motion was made,
27 (2) what ruling, decision or order was made thereon, and
28 (3) what new or different facts or circumstances are claimed
to exist which did not exist or were not shown upon such
prior motion, or what other grounds exist for the motion.

Motions to reconsider under Rule 60(b) are committed to the discretion of the trial court. *Rodgers v. Watt*, 722 F.2d 456, 460 (9th Cir. 1983) (en banc).

C. MOTION TO ENFORCE JANUARY 12, 2000 ORDER

Courts possess the inherent power to assure that their orders are carried out. See, e.g., *Chambers v. Nasco, Inc.*, 501 U.S. 32, 43-44, 47 (1991) (discussing that courts possess the implied powers necessary to perform their functions and noting that courts possess the power to sanction parties for willful disobedience to court orders).

III. ANALYSIS

A. TRW'S SETTLEMENT WITH THE STATE OF CALIFORNIA

TRW challenged \$12,053.68 of the EPA's costs in part because these costs were costs the EPA paid California's Department of Toxic Substances Control ("DTSC"). TRW argues it had previously entered into a settlement agreement with the State of California that allegedly settled all such claims, and it contends the EPA's charges would give the EPA a double recovery. (See Jan. 12, 2000 Order (Doc. 55) at 42.) The January 12, 2000 order stated:

Defendants and California Department of Toxic Substances Control ("CA DTSC") reached a settlement December 31, 1996 in which the State released all claims incurred in connection with the AMOCU. Appendix, p. 10, n.1. Prior to the agreement, the EPA gave California Department of Health Services ("DHS") a block grant for thirty-eight superfund

*Defendants also refer to California Department of Toxic Substances Control as a party to this grant. Defendants state: "EPA instructed DHS to 'draw down' amounts from respective sites. . . . From the documentation provided, it appears that original

1 sites, with specific amounts allocated to each site.
2 Although DHS submitted invoices reflecting the amount of
3 money it wanted to draw from each superfund site, it was
4 unclear what activities DHS performed at individual OUs,
5 including the AMAOU. EPA recognized this and reduced its
6 original charge to the AMAOU by two-thirds,³ because two
7 other OUs exist at the Site. Appendix, p. 11. EPA
8 contended Defendants were still obligated to pay the
9 remaining amount because Defendants allegedly failed to
10 submit documentation of its settlement with DHS. *Id.*
11 Defendants object to all costs charged based on the EPA's
12 grant to DHS because "[a] voluntary grant of funds by the
13 federal government to the State of California is not a
14 reimbursable 'cost incurred' within the meaning of the
15 Consent Decree." Appendix p. 12. Finally Defendants argue
16 even if they are obligated to pay these amounts, EPA
17 provided no description of activities performed by DHS so
18 Defendants cannot determine the basis upon which DHS
19 allocated charges to the AMAOU, nor whether the charges are
20 consistent with the NCP, and Defendants allege these charges
21 appear random.

22 United States' response - First, the Ouyang declaration
23 clarifies the United States incurred costs pursuant to its
24 cooperative agreement with DHS in connection with the AMAOU.
25 Second, regardless of any settlement Defendants may have
26 with the state, the United States incurred the costs here
27 pursuant to the Consent Decree. Third, costs incurred
28 pursuant to cooperative agreements with states are
recoverable under CERCLA and should be recoverable here.

Defendants have met their burden with respect to the
DHS cooperative agreement costs. Defendants settled with
California's Department of Toxic Substances ("DTSC")
respecting all state costs they incurred in connection with
the AMAOU. See settlement agreement ¶ 11, at p. 5, attached
to Exh. K to Lee Decl. The costs at issue here were
incurred pursuant to an agreement between the EPA and DHS,
not DTSC. However, one document Defendants submitted under
seal identifies DTSC, and not DHS, as the party executing
the agreement. To the extent DTSC performed the state
services here billed to Defendants, the parties have not
sufficiently addressed whether the legal effect of the prior
settlement is to bar future recovery of such costs by the
EPA.

24 amount of the grant was increased numerous times. . . .
25 Apparently DHS utilized its own accounting methods in disregard
26 of EPA's instructions, as one document provides: 'Regardless of
27 any budget changes that CA DTSC may make for individual sites, CA
28 DTSC agrees to stay within the existing total grant budget.'" Appendix, p. 11.

³The original amount billed was \$36,161.05.

(Doc. 55 at 42-44 (footnotes in original).) The court ordered the parties to supply additional briefing on this issue.

TRW argues the settlement agreement, approved by this court on September 3, 1998, resolves all claims the state of California has against TRW. (See Supp. Br. at 2.) The Settlement Agreement's release, according to TRW, is broad, and releases Atlas and Vinnell Mining from "all liability to the Department, including claims alleged in the Complaint, with respect to all Department costs associated with the Atlas Mine Site incurred through December 31, 1996" (See *id.* (quoting Settlement Agreement).) TRW asserts the costs EPA seeks recovery for are duplicative of costs TRW has already paid the state. (See *id.* at 2-3.) Finally, TRW argues even if the settlement does not bar the EPA's recovery of these costs, "serious deficiencies" in the EPA's accounting should preclude recovery of these costs. (See *id.* at 3-4.)

The United States responds that TRW's settlement with DTSC specifically excluded the costs which the EPA seeks to recover here. (See United States' Resp. to Supp. Br. (Doc. 61) at 1-2.) The United States attaches the Declaration of Richard Hume, Chief of the National Priority List Unit for Northern California - Central Cleanup Operations Branch of DTSC, who states the costs the EPA seeks to recover were specifically excluded from DTSC's settlement with TRW, and that TRW and Atlas were both alerted to the exclusion of these costs in May 1997. (See Hume Decl., attached as Exh. A to Doc. 61, ¶¶ 4-8.) As to any deficiencies in accounting, the United States responds "the costs incurred by the United States pursuant to the MSCA [are] abundantly fair and

1 reasonable," in that the EPA made a "substantial adjustment" to
2 ensure TRW was not being billed for time spent on other OUs, and
3 the EPA also reduced by two-thirds the cost for the time spent at
4 the Site by the State's Remedial Project Manager, Mr. Frank
5 Lopez, even though Mr. Lopez affirmed in an accompanying
6 declaration that he spent over 50% of his time at the Site at the
7 AMAOU. (See Opp. to Supp. Br. at 3; Lopez Decl., attached as
8 Exh. B to Opp., ¶¶ 3-4.)

9 The United States' evidence shows that TRW's settlement with
10 DTSC omitted the costs the EPA here claims. EPA actually paid
11 the disputed costs. The Settlement Agreement only releases TRW
12 from amounts it owes DTSC, not from amounts it owes the EPA. The
13 EPA incurred costs at the Site, which included payments to the
14 DTSC. TRW was informed its settlement with DTSC was not going to
15 cover these costs. The EPA will not receive a double-recovery if
16 TRW pays these costs to the EPA.

17 TRW asserts, "no documentation has been provided to the
18 Defendants that indicates what activities were performed by the
19 State at or in connection with the AMAOU" and "logically there is
20 no way in which the EPA's allocation of the State expenses to the
21 AMAOU can be accurate; unless precisely the same State costs were
22 incurred at each of the three OUs at the site -- a statistical
23 impossibility." (See Supp. Br. at 3). EPA provides the
24 declaration of Mr. Lopez, who states he performed work at the
25

26
27 The EPA reduced by one-third the initial amount charged TRW
28 for these costs at the AMAOU. This reduction was to account for
the existence of three OUs at the Site, only one of which TRW is
responsible for (the AMAOU).

1 AMAOU. (See Lopez Decl., attached as Exh. B to Opp., ¶¶ 3-4.)
2 TRW's argument that it lacks documentation of what activities the
3 State actually performed at the AMAOU is misplaced; the relevant
4 inquiry is whether TRW has received the documentation it is
5 entitled to under the Consent Decree. TRW also asserts the EPA
6 should not be entitled to recover a "voluntary grant of funds
7 from the federal government to the State of California" under the
8 Consent Decree. TRW cites no language in the Consent Decree
9 which prohibits recovery from TRW for federal grants paid to the
10 State of California for work at the AMAOU. Nor does TRW provide
11 any legal authority for this claim. TRW has not met its burden
12 with respect to the \$12,053.68. Defendants, within twenty (20)
13 days following service of this order, SHALL PAY, or RELEASE FROM
14 ESCROW, (whichever is appropriate) the disputed \$12,053.68 (plus
15 accrued interest) to the United States, as the prevailing party,
16 in the manner described in § XIX.A of the Consent Decree.
17 Defendants may become liable for stipulated penalties, as
18 provided in the Consent Decree § XXI.J, if payment is not made
19 within the specified time period.

20
21 B. ALTERNATIVE REMEDIAL CONTRACT SUPPORT (ARCS) ECOLOGY &
22 ENVIRONMENT BILLS

23 TRW challenges the documentation in support of several of
24 Ecology & Environment's ("E&E") invoices. The January 12, 2000
25 Order stated:

26 Regarding the \$125,021.84 of undocumented or
27 unexplained contractor costs, to the extent these costs are
28 truly undocumented, Defendants have met their burden. In
response to some of Defendants' complaints, the EPA in its
Written Statement of Decision addressed Defendants' claims

1 of no documentation by stating, "EPA has reviewed the
2 supporting documentation for charges by Ecology &
3 Environment and has determined that these costs were
4 properly charged to the [AMAOU]." See Written Statement of
5 Decision, Exh. M to Lea Decl. ("Written Statement"), at p.
6 4. The EPA gave this response to Defendants' complaints
7 about only a few vouchers: Voucher 24 (\$14,411.72); Voucher
8 32 (\$17,942.64); and unidentified subcontractor costs in
9 Vouchers 24-82 (\$34,554.36, exclusive of indirect costs,
10 discussed above), for a total of \$66,908.72. For other
11 vouchers, EPA was able to provide a more detailed response
12 to Defendants' complaints. See Written Response, pp. 4-5,
13 regarding Vouchers 46, 60, 25, 26. In some cases, EPA
14 excluded costs after closer review. See Written Response,
15 pp. 4-5, regarding Vouchers 25, 26. Because EPA failed to
16 provide any information as to why it found certain vouchers
properly billed to the AMAOU, but was able to provide an
explanation for other vouchers (and in some cases reduced
Defendants' outstanding bill after closer inspection),
Defendants' have shown by a preponderance of the evidence
EPA lacks substantial evidence to show these bills were
incurred at the AMAOU. To the extent these vouchers are
inadequately documented, EPA may be contravening the
documentation requirements of 40 C.F.R. § 300.160(a). EPA
has documents which satisfied it that these voucher amounts
were incurred in connection with the AMAOU. To the extent
documentation exists for these costs and EPA has not
previously produced it, and this documentation is
disclosable under FOIA, EPA has withheld this information in
contravention of the Consent Decree and the documentation
requirements of the NCP.

17 (Doc. 55 at 34-35). The Order required the United States to
18 produce the documentation that supports the \$66,908.72. (See *id.*
19 at 35.) If Defendants in good faith believed this documentation
20 does not support the \$66,908.72, they were given leave to file a
21 brief of less than five pages which explained the deficiencies in
22 the documentation and whether and when the EPA previously made
23 the documentation available. (See *id.* at 35-36.) The United
24 States was given leave to respond to Defendants' brief. (See *id.*
25 at 36.)

26 The United States instead filed a brief attaching a
27 declaration from Lisa Ouyang, and, as an exhibit to Ms. Ouyang's
28 declaration, a copy of all documentation supporting the

1 -\$66,908.72, all of which it apparently produced to TRW. (See
2 Subm. at Exhibits.) TRW responded that it is "unable to verify
3 to an absolute certainty" that the EPA has previously produced
4 this documentation before, and regardless, asserts "nothing in
5 the supplemental (or indeed the initial) documentation EPA
6 provided adequately establishes that the disputed costs are
7 justified or that the Court should reverse its Order that the
8 specific E&E charges are not recoverable." (See Subm. Resp. at
9 1.) TRW essentially re-asserts all of its prior objections to
10 the EPA's documentation. (See *id.* at 2-3.) The United States
11 replies in essence that it has provided all cost documentation
12 required by the Consent Decree and CERCLA. (See Subm. Reply at 1-
13 5.)

14 The documentation supplied by the United States appears
15 adequate. The only concern expressed in the January 12, 2000
16 Order over Voucher 24 (\$14,411.72), Voucher 32 (\$17,942.64); and
17 unidentified subcontractor costs in Vouchers 24-82 (\$34,554.36)
18 was the lack of information regarding these costs. A review of
19 the documentation produced by the EPA and of Ms. Ouyang's
20 declaration, show that E&E does not normally receive supporting
21 documentation for its contractors' subcontractors' work; that is
22 kept by the contractor. (See Ouyang Decl., attached as Exh. A to
23 Subm., ¶ 7.) Although the EPA's Office of Inspector General has
24 the power to review and audit this documentation, it is not
25 normally part of the EPA's cost package or cost review. (See
26 *id.*) The documentation provided by the EPA in support of its
27 costs is substantial. To require the EPA to provide
28 documentation it normally does not require for itself, and which

1 is normally kept in the possession of its contractor, E&E, is
2 overly burdensome, and not required by the Consent Decree. At
3 the time the Court issued the January 12, 2000 Order, it was not
4 aware that normally the EPA does not receive specific cost
5 documentation for the work performed by the subcontractors its
6 contractors employ. A review of the ample documentation provided
7 by the EPA shows the subcontractors' costs at the AMAOU are not
8 substantial. Furthermore, E&E certified the costs contained in
9 their bill (including those of the subcontractors) were accurate
10 and were incurred in connection with the AMAOU. TRW is not
11 required to any more under the Consent Decree and CERCLA. The
12 United States has met its burden of adequate documentation, and
13 Defendants, within twenty (20) days following service of this
14 order, SHALL PAY, or RELEASE FROM ESCROW, (whichever is
15 appropriate) the disputed \$66,908.72 (plus accrued interest) to
16 the United States, as the prevailing party, in the manner
17 described in § XIX.A of the Consent Decree. Defendants may
18 become liable for stipulated penalties, as provided in the
19 Consent Decree § XXI.J, if payment is not made within the
20 specified time period.

21
22 C. MOTION FOR CLARIFICATION

23 The United States addresses two issues in its request for
24 "Clarification of the Record": (1) the court's analysis of
25 *United States v. Chromalloy American Corporation*; and (2) whether
26 response costs can ever be inconsistent with the NCP. The United
27 States says it is "not seeking a new hearing or any relief from
28 the Court's ruling" of January 12, 2000, only that the "record

1 should be clarified" as set forth in its "Clarification."

2 Given that the United States specifically states it is "not
3 seeking a new hearing or any relief from the Court's ruling," it
4 is difficult to know how to proceed. The closest recognized
5 motion to what the United States seeks is a motion for
6 reconsideration pursuant to Fed. R. Civ. P. 60(b). However that
7 motion is typically made "[o]n motion and upon such terms as are
8 just," for the purposes of "reliev[ing] a party or a party's
9 legal representative from a final judgment, order, or
10 proceeding." The United States seeks no such relief.
11 Nevertheless, in an abundance of caution, the court will treat
12 this as a motion for reconsideration and determine whether
13 reconsideration is appropriate.

14 The prerequisites for reconsideration are:

15 1) mistake, inadvertence, surprise, or excusable
16 neglect;

17 (2) newly discovered evidence which by due diligence
18 could not have been discovered in time to move for a new
19 trial under Rule 59(b);

20 (3) fraud (whether heretofore denominated intrinsic or
21 extrinsic), misrepresentation, or other misconduct of an
22 adverse party;

23 (4) the judgment is void;

24 (5) the judgment has been satisfied, released, or
25 discharged, or a prior judgment upon which it is based has
26 been reversed or otherwise vacated, or it is no longer
27 equitable that the judgment should have prospective
28 application; or

 (6) any other reason justifying relief from the
operation of the judgment.

26 Fed. R. Civ. P. 60(b). None of these grounds is alleged or
27 apparent from the United States' motion. The United States'
28 "Clarification" motion appears, in fact, to be an attempt to add

1 arguments to the record that were not previously raised in their
2 moving papers. "A motion for reconsideration is not a vehicle to
3 reargue a motion or to present evidence which should have been
4 raised before." *Birmingham v. Sony Corp. of America*, 820 F.
5 Supp. 834, 856 (D.N.J. 1992), *aff'd*, 37 F.3d 1485 (3rd Cir.
6 1994). Even assuming the United States' "Clarification" is meant
7 as a motion to reconsider, a dubious assumption given that the
8 United States seeks no relief from the Court's January 12, 2000
9 Order (see *Clar.* at 8), the United States provides no basis or
10 argument for reconsideration. Reconsideration, to the extent it
11 is requested, is DENIED.

12
13 D. MOTION TO ENFORCE THE JANUARY 12, 2000 ORDER

14 1. Payment of Disputed Costs Resolved in the January
15 12, 2000 Order

16 The United States argues that TRW has not complied with the
17 January 12, 2000 Order as to the issues resolved therein, and
18 requests the Court issue an order requiring TRW to pay sums
19 awarded the United States under the January 12, 2000 order, and
20 to pay stipulated penalties set forth in the Consent Decree.
21 According to the United States, TRW has not paid it the
22 \$587,249.43 which the Court required it to pay pursuant to the
23 Consent Decree and the January 12, 2000 Order. TRW's only
24 defenses are (1) "all disputed sums have been timely deposited in
25 an interest bearing escrow account pending resolution of this
26 dispute" (Mem. of Pts. & Auth. in Opp. to United States' Mot. for
27 an Order to Enforce Jan. 12, 2000 Order ("Opp. Enf.") at 1); (2)
28 "the Court's January 2000 Order is not yet final" as the Court

1 requested further supplemental briefing and the issues raised by
2 the supplemental briefing have not been addressed (see Opp. Enf.
3 at 2.); and (3) the Consent Decree's stipulated penalties section
4 does not "apply to the pending dispute concerning claimed
5 oversight costs" (see Opp. Enf. at 3).

6 TRW's chief argument is that the entire dispute has not been
7 resolved, so it is not yet required to pay the United States for
8 those portions of the dispute over which the United States has
9 prevailed. The Consent Decree's Reimbursement section states:

10 If the United States prevails in the dispute, within twenty
11 (20) days of the resolution of the dispute, the Defendants
12 shall direct the escrow holder to remit the escrowed monies
13 (with accrued interest) to the United States, in the manner
14 described in paragraph A, of this Section, above. If the
15 Defendants prevail concerning any aspect of the contested
16 costs, the Defendants shall direct the escrow holder to
17 remit payment for that portion of the costs (plus associated
18 interest) for which they did not prevail to the United
19 States in the manner described in paragraph A, of this
20 Section, above, and Defendants shall be disbursed the
21 balance of the escrow account.

22 (Consent Decree § XIX.B at 40.) This section contemplates only
23 two situations: (1) the United States prevails on all aspects of
24 the dispute, or (2) the Defendants prevail on some or all aspects
25 of the dispute. Here, the United States prevailed on some
26 aspects of the dispute, but not all. Neither party had (at that
27 time) prevailed on two aspects of the dispute: (1) the
28 significance of the DTSC Settlement with TRW and (2) the
sufficiency of E&E's cost documentation, both addressed above.
The question is, what are Defendants required to do in such a
situation?

In terms of the actual amounts involved in the dispute, TRW
is correct. The reimbursement language suggests Defendants are

1 not required by the Consent Decree to remit payment of the
2 disputed costs until the dispute as a whole is resolved. TRW's
3 failure to pay the United States those costs on which the United
4 States prevailed in the January 12, 2000 Order, is not itself a
5 violation of the Consent Decree.

6 This memorandum opinion resolves the two remaining
7 outstanding issues in the current cost recovery dispute between
8 the parties. According to the Consent Decree § XIX.B,
9 Defendants, within twenty (20) days following service of this
10 order, SHALL PAY or RELEASE FROM ESCROW, (whichever is
11 appropriate) the amount of \$587,249.43 (with accrued interest) to
12 the United States, as the prevailing party, in the manner
13 described in § XIX.A of the Consent Decree. Defendants may
14 become liable for stipulated penalties, as provided in the
15 Consent Decree § XXI.J, if payment is not made within that
16 specified time period.

17 2. Stipulated Penalties

18 As to Stipulated Penalties, the United States argues the
19 Consent Decree provides daily penalties for violation of the
20 Consent Decree, as follows:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 7th calendar day	\$1,000
8th through 14th calendar day	\$3,750
15th calendar day and beyond	\$6,250

25 (See Enf. at 4; Consent Decree § XXI.B.) The United States
26 informed TRW in writing that the stipulated penalties are due the
27 United States as a prevailing party under the January 12, 2000
28 Order. (See Enf. at 4.)

1 The United States seeks two sets of stipulated penalties:

2 (1) stipulated penalties for the time, prior to the June 26, 1998
3 Order, during which TRW failed to place disputed funds into
4 escrow, as required by the Consent Decree (see Enf. at 5;
5 Consents Decree § XIX.B at 39-40); and (2) stipulated penalties
6 the United States asserts it is entitled to as a prevailing party
7 in this dispute, based on the January 12, 2000 Order (see Enf. at
8 7-12). As to the latter penalties, the United States waives any
9 penalties accrued prior to January 11, 2000, and seeks penalties
10 from January 11, 2000, the date the Court's order was signed.⁴

11 As to the failure to put funds in escrow, the United States
12 asserts the stipulated penalties began to accrue on March 19,
13 1998, the day when the United States unambiguously notified
14 Defendants that they had not complied with the Consent Decree.
15 The total penalty amount owed is \$233,250. (See Enf. at 5.) The
16 United States argues the June 26, 1998 Order establishes
17 Defendants violated the Consent Decree by failing to put the
18 disputed costs into escrow at the same time they filed their
19 objections to those costs, as required by the Consent Decree §
20 XIX.B. (See June 26, 1998 Order at 10-11.) The United States
21 requested \$233,250 in stipulated penalties in its briefs
22 preceding the June 26, 2000 Order, but the Order deferred "[t]he
23 request for penalties . . . pending resolution of the payment
24 dispute." (See June 26, 2000 Order (Doc. 27) at 21.)

25 The United States argues the January 12, 2000 order
26

27 ⁴The United States lists the date of the Court's January
28 2000 Order as January 11, 2000. The order was signed on that
date, but was not filed until January 12, 2000.

1 establishes it prevailed "in whole or in part," (see Consent
2 Decree § XXI.I.2 at 46), so it is entitled to penalties which
3 began accruing on May 13, 1998, when "the defendant was
4 undeniably put on notice that the United States maintained that
5 the payment provisions of the Consent Decree had been violated
6 and that such violation triggered the stipulated penalty
7 provisions of the Consent Decree." (See Enf. at 10.) However
8 the United States says it will voluntarily reduce the penalty to
9 \$406,250, which is the amount of penalties which have accrued
10 from January 11, 2000, the day the January 12, 2000 Order was
11 signed, until March 31, 2000. (See id.)

12 TRW denies the Consent Decree requires it to pay any
13 stipulated penalties. (See Enf. Opp. at 1.) As to the escrow
14 issue penalties, TRW states the parties "sought the Court's
15 intervention in a dispute between the parties regarding EPA's
16 obligation, pursuant to the Consent Decree, to provide supporting
17 documentation for its August 1994 and December 1997 Requests for
18 Payment." (See id.) The June 1998 Order required defendants to
19 deposit into escrow by June 25, 1998 the disputed funds requested
20 by the EPA's December 1997 Request for payment. Defendants argue
21 they "complied fully with the June 1998 Order and deposited the
22 disputed sums, plus interest, by the required date," so they owe
23 no penalties. (See id.)

24 TRW's arguments regarding the escrow penalties are
25 meritless. The June 26, 1998 Order resolved in the United
26 States' favor that TRW was required to place disputed funds into
27 escrow at the same time it notified the EPA of its objections to
28 the EPA's costs. (See June 26, 1998 Order at 10-11; Consent

Decree § XIX.B at 39-40.) Its failure to do so constituted a violation of the Consent Decree. Section XXI.I states:

[penalties shall continue to accrue . . . during any dispute resolution period, but need not be paid until . . . 2. [i]f the dispute is appealed to this Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties owed to EPA within 60 days of receipt of the Court's decision or order [unless that Order is appealed].

(Consent Decree § XXI.I(1) & (2) at 45-46.) The provision is clear and unambiguous. TRW's compliance after the June 26, 1998 Order does not excuse TRW's noncompliance prior to that time. TRW assumed the risk when it refused to place disputed funds into escrow at the time of its objection to the EPA's demand. It gambled that it would win that disputed issue, i.e. would be found in compliance with the Consent Decree despite its failure to place disputed funds into an escrow account pursuant to § XIX.B. After the June 26, 1998 Order found Defendants violated the Consent Decree by failing place disputed funds into escrow, payment was due within sixty days following Defendants' receipt of the June 26, 1998 Order. (See Consent Decree § XXI.I & XXI.I.2. Although the June 26, 1998 Order deferred deciding the stipulated penalty issue, it clearly held the United States was the prevailing party on the escrow issue.

The United States' motion for recovery of the stipulated penalties that accrued while TRW failed to deposit disputed funds into escrow as required by the Consent Decree § XIX.B is GRANTED. Defendants SHALL PAY, or RELEASE FROM ESCROW, (whichever is appropriate) to the United States, the stipulated penalties pursuant to the Consent Decree to the United States, WITHIN TWENTY (20) DAYS following the date of service of this memorandum

1 opinion, in the amount of \$233,250. Defendants will be liable
2 for further penalties, as provided in the Consent Decree § XXI.J,
3 if payment is not made within the specified time period.

4 As to collection of penalties based on the United States'
5 status as a prevailing party in the dispute, TRW's arguments also
6 fail. TRW argues generally that "[n]othing in Section XIX . . .
7 or Section XXIII . . . entitles plaintiff to stipulated penalties
8 in connection with a dispute regarding future response costs,
9 such as this one." (Enf. Opp. at 5.) The Consent Decree allows
10 stipulated penalties to accrue during a dispute resolution period
11 (See Consent Decree § XIX.I (specifically contemplating the
12 accrual of stipulated penalties during "any dispute resolution
13 period.") TRW's invocation of the dispute resolution process does
14 not abate the imposition of stipulated penalties, nor does it
15 stop their accrual. It merely delays, and possibly eliminates,
16 their payment: if TRW had prevailed after the dispute resolution
17 process, it would not be liable for any stipulated penalties for
18 its failure to reimburse the contested costs, because its failure
19 to reimburse would not have been interpreted as a violation of
20 the Consent Decree. (See Consent Decree § XXI.A (providing
21 stipulated penalties can be excused by dispute resolution).)

22 The only other issue is whether penalties can accrue during
23 a dispute involving costs. TRW denies disputes over future
24 response costs or oversight costs constitute "noncompliance," a
25 prerequisite for stipulated penalties under § XXI: "[U]nder the
26 Consent Decree, 'noncompliance' such as would expose defendants
27 to a risk of stipulated penalties involves the failure to
28 complete the required remediation work. It does not include the

1 payment of disputed oversight costs." (Enf. Opp. at 6 (emphasis
2 in original).)

3 The Stipulated Penalty section is not so narrow. It states:

4 A. Defendants shall be liable to the United States for
5 stipulated penalties . . . for failure to comply with the
6 requirements of this Consent Decree as specified below,
7 unless excused under Section XIII (Force Majeure) or Section
8 XIII (Dispute Resolution). "Compliance" by Defendants shall
9 include completion of the activities under this Consent
10 Decree, in accordance with the requirements of and time
11 schedules established by this Consent Decree, the SOW and
12 any plans or other documents approved by the EPA under this
13 Consent Decree.

14 (Consent Decree § XXI.A (emphasis added).) In other words, the
15 Defendants become liable for stipulated penalties when they fail
16 to comply with the Consent Decree, and "compliance" is defined as
17 "completion of the activities under this Consent Decree, in
18 accordance with the requirements of . . . this Consent Decree . .
19 . ." (Consent Decree § XXI.A.) As the January 12, 2000 Order
20 states, the Consent Decree unambiguously requires Defendants to
21 reimburse all costs, including oversight costs. (See January 12,
22 2000 Order at 12; Consent Decree §§ IV.L, XIX.A). Reimbursement
23 is an "activity" required by the Consent Decree. (See Consent
24 Decree § XIX (Reimbursement of Future Response and Oversight
25 Costs).) Failure to perform one of the Consent Decree's
26 "activities," i.e. reimbursement, constitutes noncompliance, and
27 renders Defendants liable for stipulated penalties.

28 TRW next argues the United States did not provide the
requisite notice under the Stipulated Penalties provision. The
Consent Decree provides in relevant part:

E. Except as stated otherwise in Paragraph F below, all
penalties shall begin to accrue on the day after the
complete performance is due or the day a violation occurs,

1 and shall continue to accrue through the final day of the
2 correction of the noncompliance or completion of the
activity. . . .

3 F. Following EPA's determination that Defendants have
4 failed to comply with a requirement of this Consent Decree,
EPA may give Defendants written notification of the same and
5 describe the noncompliance. EPA may also send the
6 Defendants a written demand for payment of the penalties as
provided herein. For untimely, as opposed to inadequate,
7 submittals or performance, penalties shall accrue as
provided in the preceding Paragraph regardless of whether
8 EPA has notified the Defendants of a violations [sic]. For
inadequate, as opposed to untimely, performance of the
9 requirements of this Consent Decree, EPA shall provide to
Defendants, as soon as possible, oral notification that
10 Defendants' submittal or performance is inadequate, with
written confirmation within seven (7) days that Defendants'
11 submittal or performance is inadequate. If EPA so notified
Defendants in writing within seven (7) days . . . penalties
12 shall accrue commencing with Defendants' violation, as
described above. In the event that EPA fails to so notify
13 Defendants in writing within seven (7) days . . . stipulated
penalties shall not accrue until Defendants receive written
notice from EPA. . . .

14 (Consent Decree § XXI.E & XXI.F)

15 The United States provided sufficient notice that TRW's
16 failure to reimburse would result in the imposition of stipulated
17 penalties. TRW believed it was not obligated to reimburse
18 certain costs and invoked the Dispute Resolution procedures in §
19 XXIII. The United States asserts it notified TRW on May 11, 1998
20 that it considered TRW's failure to reimburse the United States a
21 failure to perform under the Consent Decree's terms, and that
22 such conduct could render it liable for stipulated penalties.
23 This notice appears sufficient, and was well within any time

24
25 "The Court takes judicial notice of an April 6, 1998 letter
26 from the EPA to counsel for TRW, wherein the EPA states, "As
stated in the EPA's letter to you dated March 19, 1998, it is
27 EPA's further position that Atlas and Vinnell are subject to
stipulated penalties for failure to comply with the terms of the
28 Consent Decree effective March 20, 1998." (See Exh. A to
Declaration of Karen Frasier-Kolligs in Support of Motion to
Enforce Consent Decree (Doc. 20), filed May 29, 1998.

1 limits required by the Consent Decree. This is especially true
2 considering the United States is only seeking penalties accrued
3 between January 11, 2000 and March 31, 2000. TRW received
4 adequate notice that stipulated penalties would be sought.

5 TRW argues it has invoked the dispute resolution procedures
6 "with respect to plaintiff's request for sanctions," and the
7 United States' motion on these penalties is premature. (See Enf.
8 Opp. at 9-10.) TRW argues a letter the United States sent on
9 March 22, 2000 (complaining of TRW's noncompliance with the
10 January 12, 2000 Order) "represents the start of the dispute
11 resolution process, not the last shot fired before the plaintiff
12 runs off to Court." (Enf. Opp. at 9.) TRW states it has
13 "objected to plaintiff's request for sanctions within the
14 fourteen day period specified in the Consent Decree's dispute
15 resolution process," citing an April 5, 2000 letter from TRW's
16 counsel to counsel for the United States. (See Eff. Opp. at 9-
17 10; Exh. A to Frasier-Kolligs Decl. (Apr. 4, 2000 ltr.)). TRW
18 argues "plaintiff is obligated to participate in informal dispute
19 resolution" before pursuing "formal dispute resolution
20 procedures," i.e. before seeking court enforcement.

21 TRW is correct that it may invoke the dispute resolution
22 procedures to challenge penalties, and that the Consent Decree's
23 dispute resolution process requires informal dispute resolution
24 prior to "formal dispute resolution," i.e. court action (see
25 Consent Decree § XXIII.A & XXIII.B). However, the Consent Decree
26 limits the types of challenges Defendants may make to stipulated
27 penalties. Defendants may only challenge: (1) whether "a
28 violation of this Decree has occurred" to trigger penalties and

1 (2) "the duration of the alleged violation." (Consent Decree §
2 XXI.H.) That the Consent Decree was violated was decided by the
3 January 12, 2000 Order and this memorandum opinion: Defendants
4 violated the Consent Decree when they failed to reimburse the
5 United States for disputed costs which the Consent Decree
6 obligates them to reimburse. TRW does not challenge the duration
7 of the penalties, the second permissible basis for challenge.
8 Because TRW does not challenge the penalties on either of the two
9 permissible grounds, TRW's attempt to invoke the dispute
10 resolution with respect to these penalties cannot succeed.

11 The United States' motion for stipulated penalties in the
12 amount of \$406,250 is GRANTED. Defendants SHALL PAY, or RELEASE
13 FROM ESCROW, (whichever is appropriate) stipulated penalties
14 pursuant to the Consent Decree to the United States, WITHIN
15 TWENTY (20) DAYS following the date of service of this memorandum
16 opinion, in the amount of \$406,250. Defendants may become liable
17 for further penalties as provided in the Consent Decree § XXI.J,
18 if payment is not made within the specified time period.

19
20 IV. CONCLUSION

21 For the foregoing reasons:

22 1. With respect to Defendants' Supplemental Briefing on
23 Effect of the State of California's Release of Claims
24 Against Defendant (Doc. 56) and United States' Submittal
25 Pursuant to the Court's January 12, 2000 Memorandum Opinion
26 (Doc. 58), Defendants SHALL PAY or RELEASE FROM ESCROW,
27 (whichever is appropriate) to the United States WITHIN
28 TWENTY (20) DAYS following the date of service of this

1 memorandum opinion the following amounts, pursuant the
2 Consent Decree: \$12,053.68 and \$66,908.72.

3 2. As to the United States' "Clarification of the Record"
4 (Doc. 57) (reconsideration) is DENIED.

5 3. The United States' Motion to Enforce (Doc. 72) the
6 January 12, 2000 Memorandum Opinion and Order is GRANTED, as
7 follows:

8 a. The United States' argument that Defendants
9 violated the Consent Decree by failing to immediately
10 transmit payment of the costs awarded the United States
11 in the January 12, 2000 Order (\$587,249.43), is
12 incorrect. This memorandum opinion resolves all
13 outstanding issues in this dispute, hence Defendants
14 SHALL PAY to the United States WITHIN TWENTY (20) DAYS
15 following the date of service of this memorandum
16 opinion all amounts awarded the United States in the
17 January 12, 2000 Memorandum Opinion and Order, to wit:
18 \$587,249.43.

19 b. Defendants SHALL PAY, or RELEASE FROM ESCROW,
20 (whichever is appropriate) stipulated penalties
21 pursuant to the Consent Decree to the United States,
22 WITHIN TWENTY (20) DAYS following the date of service
23 of this memorandum opinion, in the amount of \$639,500
24 (\$406,250 for Defendants' failure to reimburse the
25 United States and \$233,250 for Defendants' failure to
26 place funds into escrow). Defendants may become liable
27 for further penalties as provided in the Consent Decree
28 § XXI.J, if payment is not made within the specified

1 time period.

2

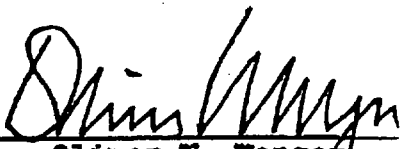
3 SO ORDERED.

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5 DATED: September 6, 2000

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Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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